

**ARTICLES
OF
INCORPORATION**

SEP 05 2003

Corporations Section

ARTICLES OF INCORPORATION
OF
FRANKLIN HEIGHTS HOMEOWNERS' ASSOCIATION

I, the undersigned, being of the age of eighteen years or more, acting as incorporator of a corporation under the Texas Non-Profit Corporation Act, as it may be amended, do hereby adopt the following Articles of Incorporation of such corporation:

Article 1. Name. The name of the corporation is Franklin Heights Homeowners' Association (hereinafter called the "**Corporation**" or the "**Association**").

Article 2. Type of Corporation. The Corporation is a non-profit corporation organized pursuant to the Texas Non-Profit Corporation Act and has no capital stock.

Article 3. Duration. The Corporation shall have perpetual duration.

Article 4. Definitions. In addition to the definitions set forth herein, capitalized terms that are not defined herein shall have the meaning as defined in the Declaration of Covenants, Conditions and Restrictions for Franklin Heights, recorded or to be recorded in the public land records of Collin County, Texas, as it may be amended from time to time (the "**Declaration**"), which definitions are incorporated herein by this reference.

Article 5. Registered Office and Agent. The initial registered office of the Corporation is 1800 Lakeway, Suite 100, Lewisville, Texas 75057, and the initial registered agent at such address is Chris Mullins.

Article 6. Incorporator. The name and address of the incorporator is Benton Karnes at 1800 Lakeway, Suite 100, Lewisville, Texas 75057.

Article 7. Purpose of Corporation. The Corporation does not contemplate pecuniary gain or benefit, direct or indirect, to its Members. In way of explanation and not of limitation, the purposes for which it is formed are: (i) to be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws, and as provided by law; and (ii) to provide an entity for the furtherance of the interests of the owners of property subject to the Declaration.

Article 8. Powers of the Corporation. In furtherance of its purposes, the Corporation shall have the following powers, which, unless indicated otherwise by the Declaration or the Bylaws, may be exercised by the Board of Directors: (i) all of the powers conferred upon nonprofit corporations by the laws of the State of Texas in effect from time to time; (ii) all rights and powers conferred on property owners' associations by the laws of the State of Texas; and (iii) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in these Articles of Incorporation, the Bylaws, the Declaration or the laws of the State of Texas.

Article 9. Membership. The Corporation shall be a membership corporation without certificates or shares of stock. All Owners, by virtue of their ownership of a Lot subject to the Declaration, are Members of the Association and such membership is appurtenant to, and inseparable from, ownership of the Lot.

Article 10. Voting. The Members shall be divided into classes and entitled to vote in accordance with the Declaration and the Bylaws. Cumulative voting is not allowed.

Article 11. Board of Directors. The business and affairs of the Corporation shall be conducted, managed, and controlled by a Board of Directors. The Board of Directors may delegate such operating authority to such companies, individuals, or committees as it, in its discretion, may determine. The method of election (except for the initial Board of Directors below), removal and filling of vacancies, and the term of office shall be as set forth in the Bylaws. The Board of Directors shall consist of 3, 5 or 7 members. The initial Board of Directors shall consist of the following 3 members:

Rick Davis	1800 Lakeway Suite 100 Lewisville, Texas 75057
Stephen Haines	1800 Lakeway Suite 100 Dallas, Texas 75057
Jason Steffan	1800 Lakeway Suite 100 Lewisville, Texas 75057

Article 12. Limitation on Directors' and Officers' Liability and Indemnification. Except as provided below in this paragraph, an officer, director or committee member of the Association is not liable to the Association or its Members for monetary damages or acts or omissions that occur in the person's capacity as an officer, director or committee member, except to the extent a person is found liable for: (i) a breach of the officer's, director's or committee member's duty of loyalty to the Association or its Members; (ii) an act or omission not in good faith that constitutes a breach of duty of the officer, director or committee member to the Association; (iii) an act or omission that involves intentional misconduct or a knowing violation of the law; (iv) a transaction from which the officer, director or committee member receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the person's office or position; or (v) an act or omission for which the liability of an officer, director or committee member is expressly provided by an applicable statute. The liability of officers, directors and committee members of the Association may also be limited by the Charitable Immunity and Liability Act of 1987, Chapter 84, Texas Civil Practice and Remedies Code, as amended. The foregoing limitation on the liability of an officer, director or committee member does not eliminate or modify that person's liability as a Member of the Association.

Article 13. Dissolution. The Corporation may be dissolved with the written approval of not less than 67% of each class of Members as may be more specifically provided in the Bylaws and in accordance with the laws of the State of Texas. Upon dissolution of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation will be distributed

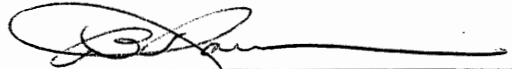
Franklin Heights

to an appropriate public agency to be used for purposes similar to those for which this Corporation was created, or shall be granted, conveyed and assigned to a nonprofit corporation, association, trust or other organization to be devoted to such similar purposes. Any dissolution is subject to the terms of Article 15 hereof, if applicable.

Article 14. Amendment. Amendment of these Articles of Incorporation shall require approval of at least 67% of all Lot Owners.

Article 15. Conflict with Other Documents. In the event of a conflict between these Articles of Incorporation and the Declaration, the Declaration shall control. In the event of a conflict between these Articles of Incorporation and the Bylaws, these Articles of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this 2nd day of Sept, 2003.


Benton Karnes

BYLAWS

BYLAWS

OF

FRANKLIN HEIGHTS HOMEOWNERS' ASSOCIATION

ARTICLE I

NAME, PRINCIPAL OFFICE AND DEFINITIONS

1.1 **Name.** The name of the corporation is Franklin Heights Homeowners' Association (the "**Association**").

1.2 **Principal Office.** The principal office of the Association shall be located in Collin County, Texas or in such other county in Texas as the Board of Directors determines. The Association may have such other offices, either within or outside the State of Texas, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 **Definitions.** In addition to the definitions set forth herein, capitalized terms that are not defined herein shall have the meaning as defined in the Declaration of Covenants, Conditions and Restrictions for Franklin Heights, recorded or to be recorded in the public land records of Collin County, Texas, as it may be amended from time to time (the "**Declaration**"), which definitions are incorporated herein by this reference.

ARTICLE II

ASSOCIATION; MEMBERSHIP AND MEETINGS

2.1 **Membership.** The Association shall have two classes of membership, Class A and Class B, as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated herein by this reference.

2.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

2.3 **Annual Meetings.** The first meeting of the Association, whether regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be at a time set by the Board of Directors.

2.4 **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board of Directors or upon a petition signed by Members representing at least 10% of the total Class A votes in the Association.

2.5 **Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to an Owner of each Lot entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall

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be transacted at a special meeting except as stated in the notice.

2.6 Voting. The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference.

2.7 Proxies. At all meetings of Members, each Member may vote in person (or if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Texas law. All proxies shall be in writing specifying the Lot(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it is given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter or longer period is specified in the proxy.

2.8 Quorum - Adjournment. Except as provided in these Bylaws or in the Declaration, the presence, in person or by proxy, of Members representing 20% or greater of the total votes in the Association shall constitute a quorum at all meetings of the Association. If, however, such quorum shall not be present or represented at any meeting, the Members present at the meeting that are entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as stated above is present or represented.

2.9 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without notice and without a vote, if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 90 days of the earliest date that a notice regarding such consent is delivered by the Association, which date shall be designated in the notices. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. For votes taken by written consent as provided above, the date specified in the notice as the ownership date, which date shall not be more than 20 days prior to the date the notices are sent, shall be the date used for determining the ownership of the Lot for the written consent voting purposes. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE III BOARD OF DIRECTORS

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by Declarant, the directors shall be Members or Residents and no Owner and Resident representing the same Lot may serve on the Board of Directors at the same time. A "Resident" shall be any natural person 18 years of age or older whose principal place of residence is a Dwelling. In the case of a Member which is not a natural person, any officer, director, partner, employee or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written

notice to the Association signed by such Member; provided no Member may have more than one such representative on the Board of Directors at a time, except for the Declarant.

3.2 Number of Directors. The Board of Directors shall consist of 3, 5 or 7 directors, as provided herein and as determined by the Board of Directors. The initial Board of Directors shall consist of 3 directors as identified in the Articles of Incorporation.

3.3 Directors - During Class B Control Period. During the Class B Control Period, all directors shall be selected and removed by Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant.

3.4 Directors - After Class B Control Period. Following expiration of the Class B Control Period, the directors shall be nominated and elected as follows:

a. **Nomination Procedures.** Prior to each election, the Board of Directors shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position. The Board of Directors shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations from the floor shall also be permitted.

b. **Nominating Committee.** Nominations for election to the Board of Directors may also be made by a nominating committee. The nominating committee, if any, shall consist of a Chairperson, who shall be a member of the Board of Directors, and three or more Members or representatives of Members. The Board of Directors shall appoint the members of the nominating committee not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced at each annual meeting. The nominating committee may make as many nominations for election to the Board of Directors as it shall in its discretion determine. In making the nominations, the nominating committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

c. **Election and Term.** At the first annual meeting after the expiration of the Class B Control Period, all directors shall be elected by the Members to a term of 1 year. The number of directors to be elected at such meeting shall be determined by the then current Board of Directors. Upon the expiration of the term of office of each director elected by the Members, a successor shall be elected to serve a term of 1 year, unless the Board of Directors decides to allow one or more of the directors to be elected to serve for a term of 2 years. Unless removed as provided herein, the directors shall hold office until their respective successors shall be elected.

d. **Election Procedures.** Each Owner may cast the entire vote assigned to his or her Lot for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

e. **Removal.** Any director elected by the Members may be removed, with or without cause, by Members holding 40% or greater of the votes entitled to be cast. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose.

Upon removal of a director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such director. Any director elected by the Members who has 3 or more consecutive unexcused absences from the Board of Directors meetings, or who is more than 60 days delinquent (or is the representative of a Member who is delinquent more than 60 days) in the payment of any assessment or other charge due the Association, or who after notice and hearing is held to be in violation of the Declaration, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board of Directors may appoint a successor to fill the vacancy for the remainder of the term. In the event of death, disability or resignation of a director elected by the Members, the Board of Directors may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term.

3.5 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a 67% or greater Class Vote at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board of the Directors prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.6 Meetings of the Board of Directors.

a. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as a majority of the directors shall determine, but at least 4 such meetings shall be held during each fiscal year with at least 1 per quarter. Notice of the time and place of a regular meeting shall be communicated to directors not less than 4 days prior the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

b. **Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any 2 directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (i) as provided in Section 8.4 herein; (ii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iii) facsimile, computer or such other communication device. All such notices shall be given at the director's telephone number, fax number or sent to the director's address as shown on the records of the Association. Notices given by mail shall be deposited at least 7 business days prior to the time set for the meeting. Notices given by personal delivery, telephone, or other electronic device shall be delivered or transmitted at least 72 hours before the time set for the special meeting.

c. **Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding a meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting.

d. **Telephonic Participation in Meetings.** Members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or committee by means of conference telephone or similar communication equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

e. **Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors, unless otherwise specified in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board of Directors cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

f. **Notice to Owners; Open Meetings.** Subject to the provisions of Section 3.6g, all meetings of the Board of Directors shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

g. **Action Without Meeting.** Any action to be taken at a meeting of directors or any action that may be taken at a meeting of directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

3.7 Powers of Directors. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles of Incorporation, and as provided by law. The Board of Directors may do or cause to be done all acts and things as are not directed by the Declaration, Articles of Incorporation, these Bylaws, or Texas law to be done and exercised exclusively by the membership generally.

3.8 Duties of Directors. The duties of the Board of Directors shall include, without limitation:

- a. preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- b. levying and collecting such assessments from the Owners;
- c. providing for the operation, care, upkeep, and maintenance of the Common

Maintenance Areas;

d. designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

e. depositing all funds received on behalf of the Association in appropriate bank accounts or in other accounts approved by the Board of Directors, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;

f. making and amending rules in accordance with the Declaration;

g. opening the bank accounts on behalf of the Association and designating the signatories required;

h. making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Maintenance Areas in accordance with the Declaration and these Bylaws;

i. enforcing the provisions of the Declaration and any rules or standards developed pursuant to the Declaration, the Articles of Incorporation, these Bylaws and bringing any legal proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

j. obtaining and carrying insurance as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

k. paying the cost of all services rendered to the Association;

l. keeping books with detailed accounts of the receipts and expenditures of the Association;

m. taking such actions as contemplated by the Board of Directors in the Declaration, these Bylaws and/or the Articles of Incorporation;

n. permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Property; and

o. indemnifying a director, officer or committee member, or former director, officer, committee member of the Association or any agent, contractor or management company of the Association to the extent such indemnity is required or permitted under Texas law, the Articles of Incorporation or the Declaration.

3.9 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board of Directors shall obtain Member approval in the same manner provided for Special Assessment as specified in the Declaration if the total amount of such borrowing, together with all other debt incurred within the previous 12 month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year.

ARTICLE IV OFFICERS

4.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The President and Secretary shall be elected from among the members of the Board of Directors; other officers may, but need not be members of the Board of Directors. Any two or more offices may be held by the same person, except for the offices of President and Secretary.

4.2 **Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

4.3 **Term.** The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for 1 year, unless he or she shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

4.4 **Special Appointments.** The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

4.5 **Resignation and Removal.** Any officer may be removed from office, with or without cause, by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 **Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

4.7 **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors, including, without limitation, the following:

a. **President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Board of Directors and the Members and shall see that orders and resolutions of the Board of Directors are carried out.

b. **Vice President.** The Vice President shall act in place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board of Directors.

c. **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; serve notice of meetings of the Board of Directors and of the Members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board of Directors.

d. **Treasurer.** The Treasurer shall receive and deposit, in appropriate bank accounts or in other accounts approved by the Board of Directors, all monies of the Association and

shall disburse such funds as directed by resolution of the Board of Directors; sign all checks of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

4.8 **Authorized Agents.** Except when the Declaration, these Bylaws or the Articles of Incorporation require execution of certain instruments by certain individuals, the Board of Directors may authorize any person to execute instruments on behalf of the Association. In the absence of such Board of Directors' resolution, the President and the Secretary are the only persons authorized to execute instruments on behalf of the Association. However, only the President and/or Secretary shall have the authority to sign a mortgage or deed of trust relating to the Common Area.

ARTICLE V ASSOCIATION MATTERS

5.1 **Committees.** The Board of Directors may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board of Directors may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Management.** The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

5.3 **Right to Contract.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational, or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board of Directors.

5.4 **Accounting Standards.** The following management standards of performance shall be followed unless the Board of Directors by resolution specifically determines otherwise: (i) accrual accounting, as defined by generally accepted accounting principles, shall be employed; (ii) accounting and controls should conform to generally accepted accounting principles; (iii) cash accounts of the Association shall not be commingled with any other accounts; (iv) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; any thing of value received shall benefit the Association; and (v) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors.

5.5 **Accounting Reports.** Unless the Board of Directors by resolution specifically determines otherwise, the Board of Directors shall obtain the following reports:

a. **Quarterly Reports.** Commencing at the end of the quarter in which the first Lot with a Dwelling thereon is conveyed, financial reports shall be prepared for the Association at least quarterly containing (i) an income statement reflecting all income and expense activity for

the preceding period on an accrual basis; (ii) a variance report reflecting the status of all accounts in an actual versus approved budget format; (iii) a balance sheet as of the last day of the preceding period; and (iv) a delinquency report listing all Owners who are delinquent in paying any assessment at the time of the report and describing the status of any action to collect such assessments which remain delinquent.

b. **Annual Reports.** An annual report consisting of at least the following, which shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board of Directors determines, by an independent public accountant.

5.6 Enforcement of Declaration. The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of any duty imposed under the Declaration (and any rules promulgated pursuant thereto), these Bylaws and the Articles of Incorporation and any amendment thereto.

a. **Notice and Hearing.** Except as provided in paragraph 5.6b below, prior to imposition of any sanction hereunder or under the Declaration, the Board of Directors or its delegate shall serve an Owner of the Lot related to or connected with the alleged violation with written notice as provided below and provide such Owner with an opportunity of a hearing as provided below.

i. **Written Notice.** The written notice to be sent by the Association shall describe (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than 10 days within which the Owner may present a written request for a hearing to the Board of Directors; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a hearing is requested within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided that the Board of Directors may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

ii. **Hearing.** If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Board of Directors in executive session. The Owner violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, notice to the Owner of the time and place of the hearing shall be given in accordance with Section 8.4 herein. The notice requirement shall also be deemed satisfied if the Owner or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

b. **No Notice or Hearing Required.** Notice and/or hearing is not required if (i) the violation is the failure to pay an annual or special assessment, (ii) the alleged violator was held by the Board of Directors in violation of the same violation within 12 months of the new alleged violation, or (iii) the Board of Directors or its designee determines that notice and/or a hearing is not appropriate, desirable or in the best interest of the Association due to the circumstances, including, without limitation, the nature and type of the violation, the nature of the harm or damage attributable to the violation and the Association's ability to stop or limit the harm or

damage. If notice and a hearing are not required in accordance with the foregoing, then the Association may exercise self-help remedies to correct the violation at any time.

c. **Optional Courtesy Letter.** The Association may, at its option and in its sole and absolute discretion, voluntarily provide the Owner of the Lot related to or connected with the alleged violation with a courtesy letter informing the Owner of the violation. The foregoing courtesy letter is not required to be given by the Association and such notice shall not constitute the written notice described Section 5.6a above. The Board of Directors or its designee shall have the sole and exclusive right to determine under which facts and circumstances the Association may elect to send a courtesy letter.

d. **No Waiver.** In the event the Board of Directors decides, in its discretion, not to take enforcement action, such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenant, restriction, or rule.

ARTICLE VI ASSESSMENTS

As more fully provided in the Declaration each Member is obligated to pay to the Association annual and special assessment (and specific assessments if applicable) which are secured by a continuing lien upon the Lot against which the assessment is made. If an assessment is not paid as provided in the Declaration, then the Association shall be entitled to the remedies provided in the Declaration, these Bylaws and the Articles of Incorporation.

ARTICLE VII AMENDMENTS

7.1 **Amendment by Declarant.** During the Class B Control Period and subject to any applicable provisions in the Declaration, the Declarant may amend these Bylaws without approval of the Board of Directors or any Class A Members. In addition, after the expiration of the Class B Control Period but while the Declarant owns a Lot, Declarant may amend these Bylaws if such amendment (i) is necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) is necessary to comply with the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U. S. Department of Veterans Affairs, the U. S. Department of Housing and Urban Development, or any other applicable governmental agency or secondary mortgage market entity; or (iii) is necessary to clarify or to correct technical, typographical or scrivener's errors; provided, however, any such amendment must not have a material adverse effect upon any right of any Owner.

7.2 **Amendment by Members.** Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of persons entitled to cast at least 51% votes of the total votes in each Class of Members. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

7.3 **Validity and Effective Date of Amendments.** Amendments to these Bylaws shall become effective upon the date of the amendment, unless a different date is specified in the amendment. Any procedural challenge to an amendment must be made within 3 months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

**ARTICLE VIII
MISCELLANEOUS**

8.1 **Fiscal Year.** The fiscal year of the Association shall be determined by the Board of Directors. If the Board of Directors fails to adopt a certain fiscal year, then until the Board of Directors adopts a specific fiscal year the fiscal year shall be January 1st to December 31st of every year, except that the first fiscal year shall begin on the date of incorporation.

8.2 **Conflicts.** In the event of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the event of any conflict between the Declaration and these Bylaws, the Declaration shall control.

8.3 **Books and Records.**

a. **Inspection by Members.** The Board of Directors shall make the books and records of the Association available for inspection and copying by any Member, or the duly appointed representative of any of the Member. The files and records of an attorney or accountant who performs services for the Association are not records of the Association and are not subject to inspection by Members. The Board of Directors may deny the request to review particular records to the extent the Board of Directors determines that the Member's purpose for inspection is not proper.

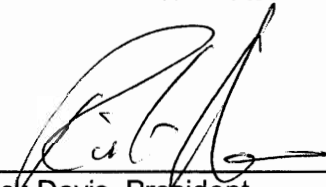
b. **Rules of Inspection.** The Board of Directors may establish reasonable rules with respect to: (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing copies of documents requested.

c. **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical property owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

8.4 **Notices.** Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements and other communications under the Declaration or these Bylaws shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given 3 days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member or director at any meeting shall constitute waiver of notice by the Member or director of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members or directors shall be deemed the equivalent of proper notice.

IN WITNESS WHEREOF, we being all of the directors of the Association have executed these Bylaws on the dates set forth below.

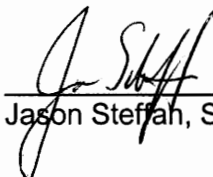
Date: 8-26-03


Rick Davis, President

Date: 8-27-03


Stephen Haines, Vice President

Date: 9/2/03


Jason Steffah, Secretary-Treasurer

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 (THE STATE OF TEXAS) (COUNTY OF COLLIN)
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

AUG 17 2004

Brenda Taylor



Filed for Record in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

On Aug 17 2004
At 8:35am

Doc/Num : 2004- 0122058

Recording/Type:BY 36.00
Receipt #: 32601

SECRETARY'S CERTIFICATE

I, Suzette Potvin, hereby certify that I am the duly elected, qualified and acting Secretary of Franklin Heights Homeowners' Association (the "Association"), and as such officer I have access to the records of the Association, and further certify as follows that:

1. Attached hereto as Exhibit A is a true and correct copy of the Articles of Incorporation of the Association, as amended, there being no further amendments to date.
2. Attached hereto as Exhibit B is a true and correct copy of the Bylaws of the Association, as amended, there being no further amendments to date.

IN WITNESS WHEREOF, I have duly executed this certificate as of July 5, 2004

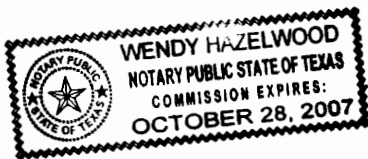
COUNTY CLERK'S MEMO
PORTIONS OF THIS
DOCUMENT NOT
REPRODUCIBLE
WHEN RECORDED

Franklin Heights Homeowners' Association

By: Suzette Potvin
Suzette Potvin, Secretary

THE STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was acknowledged before me by Suzette Potvin, Secretary of Franklin Heights Homeowners' Association, on July 5, 2004, 2004.



Wendy Hazelwood
Notary Public, State of Texas

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 (COUNTY OF COLLIN) (THE STATE OF TEXAS)
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas.

Filed for Record in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

AUG 17 2004

On Aug 17 2004
At 8:35am

Doc/Num : 2004- 0122059

Recording/Type:CT 14.00
Receipt #: 32601

Brenda Taylor



Document Scanned
By: mpacker Date: 8-25-04
File Name: 171 Sec Cert Rec 5733
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**COVENANTS, CONDITIONS
&
RESTRICTIONS**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FRANKLIN HEIGHTS

TX
Record in:
County, McKim
Brenda Taylor
County Clerk
Feb 25 2004
11:41am
: 2004- 0025677
Type: Fb 00.00
7269

This Declaration of Covenants, Conditions and Restrictions for Franklin Heights is made on the date hereinafter set forth by the Declarant, Centex Homes, a Nevada general partnership.

Declarant is the owner of the Property (as defined herein). Declarant desires to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property. The Declaration is intended to provide a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Property. In furtherance of such plan, Declarant has caused or intends to cause the Franklin Heights Homeowners' Association to be formed as a Texas nonprofit corporation to own, operate, and maintain the Common Area (as defined herein) and to administer and enforce the provisions of this Declaration.

Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration, which shall run with the title to the Property. This Declaration shall be binding upon all parties having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any portion of the Property.

ARTICLE I
DEFINITIONS

- 1.1 "Annexable Property" means any real property that is adjacent to the Property (as hereinafter defined) that Declarant now owns or acquires in the future.
- 1.2 "ACA" or "Architectural Control Authority" shall have the meaning provided such terms in Section 6.2 herein.
- 1.3 "ACA Standards" means standards adopted by the ACA regarding architectural and related matters, including, without limitation, architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which may be either recommended or required by the ACA for use within the Property.
- 1.4 "Association" means the Franklin Heights Homeowners' Association, a Texas nonprofit corporation established for the purposes set forth herein.
- 1.5 "Association Fencing" means that certain fencing installed by Declarant on the real property described and/or depicted on Exhibit "C" attached hereto.
- 1.6 "Board of Directors" means the board of directors of the Association.

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By: <u>Bracker</u>	Date: <u>7/1/04</u>
File Name: <u>171-CRS-Rec 2004-</u>	<u>0025677</u>

1.7 **"Builder"** means any person or entity who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person's or entity's business.

1.8 **"City"** means the City of McKinney.

1.9 **"Class B Control Period"** means the period commencing upon the date of this Declaration and expiring upon the earliest of: (i) 10 years after conveyance of the first Lot, (ii) a date that Declarant in writing elects to terminate the Class B Control Period, or (iii) when 75% of the residential building sites ("lots") proposed within the Development have been improved with a Dwelling thereon and conveyed to persons or entities other than a Builder. For purposes of determining the number of building sites within the Development, the final subdivision plats, when Recorded against the entire Development showing each residential building site, shall be the determining documentation.

1.10 **"Class Vote"** means a vote that is counted or tallied for each separate class of voting and requires the specific percentage from each class.

1.11 **"Common Area"** and **"Common Areas"** shall mean all areas (including the improvements thereon) within the Property owned or to be owned by the Association for the common use and enjoyment of the Members. The Common Area to be owned by the Association at the time of the conveyance of the first Lot (other than to an entity that may assume a Declarant status as provided herein) is described or depicted and designated on Exhibit "B" attached hereto.

1.12 **"Common Expenses"** shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Member(s) and/or the Common Maintenance Areas, but excluding any expenses incurred during the Class B Control Period for the initial or original construction of improvements.

1.13 **"Common Maintenance Areas"** shall mean the Common Areas, if any, and any areas within public rights-of-way, easements (public and private), portions of a Lot, public parks, private streets, landscaping, entry feature, fence or similar areas that the Board of Directors deems necessary or appropriate to maintain for the common benefit of the Members.

1.14 **"County"** means the County of Collin.

1.15 **"Declarant"** means Centex Homes and its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign. There may be more than one Declarant, if Declarant makes a partial assignment of the Declarant status.

1.16 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Franklin Heights, and any amendments and supplements thereto made in accordance with its terms.

1.17 **"Designated Interest Rate"** means the interest rate designated by the Board of Directors from time to time, subject to any interest limitations under Texas law. If the Board of Directors fails to designate an interest rate, then the interest rate shall be the lessor of 12% per

annum or the highest rate permitted by Texas law. The Designated Interest Rate is also subject to the limitations in Section 11.7 herein.

1.18 "**Development**" means the Property and the Annexable Property.

1.19 "**Dwelling**" means any residential dwelling situated upon any Lot.

1.20 "**Entry Signs**" shall mean the entry feature signs for the subdivision that are placed by the Declarant or its agents on the real property subject to the Landscape and Wall Easement.

1.21 "**Landscape and Wall Easement**" means the easement as depicted on Exhibit "D" attached hereto where Declarant has installed the Association Fencing and/or Entry Monument Signs.

1.22 "**Lot**" means any separate residential building parcel shown on a Recorded Subdivision plat of the Property or any part thereof, but only if such parcel has in place the infrastructure (including utilities and streets) necessary to allow construction of a single-family home thereon. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of a Lot.

1.23 "**Member**" means any person, corporation, partnership, joint venture or other legal entity that is a member of the Association pursuant to the terms in Article III herein.

1.24 "**Owner**" means the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract for sale, then the purchaser (rather than the fee Owner) will be considered the Owner.

1.25 "**Property**" means the real property described on Exhibit "A" attached hereto (other than areas dedicated to the City or County) and such additional property as is brought within the jurisdiction of the Association and made subject to this Declaration.

1.26 "**Record,**" "**Recording**" or "**Recorded**" means the filing of a legal instrument in the Public Records of Collin County, State of Texas, or such other place as may be designated as the official location for filing deeds, plats, and similar documents affecting title to real property.

1.27 "**Special Fencing**" means that certain fencing installed by Declarant or a Builder on the real property depicted and/or described on Exhibit "E" attached hereto.

1.28 "**Supplemental Declaration**" means a Recorded instrument which subjects additional property to this Declaration and/or imposes additional restrictions and obligations on the land described in the instrument.

1.29 "**Vacant Lot**" means a Lot that does not have thereon a Dwelling that has been occupied at any time (past or current) for residential purposes.

**ARTICLE II
PROPERTY RIGHTS**

2.1 **Owners' Easements of Use and Enjoyment**1.. Every Owner will have a right and non-exclusive easement of use, access and enjoyment in and to the Common Areas, and such easement will be appurtenant to and will pass with the title to every Lot, subject to any limitations set forth herein, including, without limitation, the following:

a. **Rules.** The right of the Association to establish and publish rules and regulations governing the use of the Common Areas and/or the Lots.

b. **Suspension Voting Rights.** The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid.

c. **Conveyance of Common Area.** The right of the Association, subject to the provisions hereof, to dedicate, sell or transfer all or any part of the Common Areas. However, no such dedication, sale or transfer will be effective unless there is a 67% or greater vote, excluding Declarant, approving such action.

d. **Mortgage Common Area.** The right of the Association, subject to the provisions hereof, to mortgage or lien all or any part of the Common Areas. However, the Common Areas cannot be mortgaged or liened without a 67% or greater vote, excluding Declarant, approving such action.

2.2 **Prohibitions on Easement of Use and Enjoyment.** Each Owner's right and easement of use and enjoyment in and to the Common Area is further limited as follows:

a. **No Transfer without Lot.** An Owner's right and easement of use and enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot and such right and easement of use and enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

b. **No Partition.** Except as provided in Section 2.1.c herein, the Common Area shall remain undivided and no action for partition or division of any part thereof shall be permitted.

2.3 **Right to Delegate Use and Enjoyment of Common Area.** Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and guests as applicable, subject to the terms in this Declaration, the Bylaws and any reasonable rules of the Board of Directors. An Owner who leases his or her Dwelling is deemed to have assigned all such rights to the lessee of such Dwelling.

ARTICLE III MEMBERSHIP AND VOTING

3.1 **Membership - Owners.** Every Owner by virtue of ownership of a Lot will be a member of the Association. Membership will be appurtenant to and will not be separated from ownership of any Lot.

3.2 **Voting Rights.** The Association shall have the following two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot owned. However, when more than one person holds an interest in any Lot, all such persons shall be members, but only one vote in total may be cast per Lot as the Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. The Association shall have no affirmative obligation to take any action to determine which Owner is the person designated to cast the Lot's vote. If the Owners fail to advise the Association of the person designated to cast the Lot's vote, then the Lot's vote shall be suspended if more than one person or entity seeks to exercise it.

Class B. The sole Class B Member shall be Declarant. The Class B Member is entitled to three (3) votes for each Lot owned by the Class B Member. The Class B membership shall cease and be converted to Class A membership upon expiration of the Class B Control Period.

ARTICLE IV ASSESSMENTS

4.1 **Obligation to Pay Assessments.** Subject to the terms of this Article IV, the Declarant, for each Lot it owns, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, (ii) special assessments as provided in Section 4.5 herein, and (iii) specific assessments as provided in Section 4.9 herein.

4.2 **Personal Obligation to Pay Assessments.** Each such assessment, together with interest at the Designated Interest Rate, late charges, costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no mortgagee under a Recorded first mortgage or beneficiary of a Recorded first deed of trust (meaning any Recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust), shall be liable for unpaid assessments which accrued prior to such acquisition of title. In addition, no mortgagee shall be required to collect assessments.

4.3 **Purpose of Annual and Special Assessments.** Annual assessments and special assessments levied by the Association shall be used for Common Expenses. The Association may establish and maintain a reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Maintenance Areas.

4.4 **Maximum and Actual Annual Assessment.** Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$308.00 per Lot. The Board of Directors may fix the actual annual assessment at an amount not in excess of the specified maximum annual assessment. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased as follows:

a. **Maximum Increase Without Vote.** The maximum annual assessment may be increased by the Board of Directors without a vote of the membership each year by 10% above the maximum annual assessment for the previous year. The Board of Directors may increase the maximum annual assessment with or without increasing the actual annual assessment.

b. **Maximum Increase With Vote.** The maximum annual assessment may be increased more than 10% above the prior year's maximum annual assessment amount by a 67% or greater Class Vote approving such action.

4.5 **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment to cover expenses which the Board of Directors determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget, provided, that any such special assessment must have a 67% or greater Class Vote approving such action.

4.6 **Uniform Rate of Assessment - Reduced for Vacant Lots.** Both annual assessments and special assessments shall be fixed at a uniform rate for all Lots, except that Vacant Lots shall be assessed at 25% of the regular full assessment rate.

4.7 **Declarant's Payment of Full Assessments for Vacant Lots or Shortfall Amount.** During the period that Declarant owns any Vacant Lot, if the Association's revenues are insufficient to pay the expenses of the Association, then Declarant shall pay to the Association the lesser of: (i) the difference between the revenues and the expenses, or (ii) the difference between the total amount of assessments paid by Declarant for Vacant Lots (assessed at the reduced assessment rate) and the total amount that Declarant would have paid for such Vacant Lots if such Vacant Lots were assessed as Lots at the full (100%) rate. Declarant shall pay such amount within 30 days of receipt of request for payment thereof from the Association, provided that if the budget deficit is the result of the failure or refusal of an Owner or Owners to pay their annual assessment or special assessments, the Association will diligently pursue (the Declarant may also pursue at its option) all available remedies against such defaulting Owners and will promptly reimburse the Declarant the amounts, if any, so collected.

4.8 **Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the date of conveyance of the first Lot to an Owner (other than to a Builder or an entity that assumes the Declarant status as provided herein), unless the Board of Directors elects to commence the annual assessment earlier. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each assessment period. Written notice of the annual assessment shall be sent to an Owner of every Lot subject thereto. The due dates shall be established by the Board of Directors. The Board of Directors shall also establish whether the annual assessment shall be paid annually, quarterly or monthly.

4.9 **Specific Assessments.** The Association shall have the power to levy specific assessments against a particular Lot to (i) cover costs incurred in bringing a Lot into compliance with this Declaration, (ii) cover costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests, and/or (iii) collect any sums due by the Owner to the Association (other than annual assessments or special assessments or interest or late charges related thereto), including, without limitation, fines and transfer fees.

4.10 **Capitalization of Association.** Upon acquisition of record title to a Lot by the first Owner thereof (other than Declarant or a Builder), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to two months of the full annual assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

4.11 **Certificate of Assessment Status.** The Association will, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

4.12 **Failure to Pay Assessments; Remedies of the Association.** With respect to any assessment or other sum due herein not paid within 10 days after the due date, the Association shall have the right to: (i) charge a late charge, in an amount determined by the Board of Directors; (ii) charge interest on the amount due at the Designated Interest Rate from the due date until the date the sum is paid; and/or (iii) charge costs and fees related to the collection of the sum due. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of his or her Lot. The failure to pay assessments shall not by the terms of this Declaration constitute a default under an insured mortgage, unless otherwise provided by the terms of such mortgage.

4.13 **Lien.**

a. **Creation of Lien.** The Association shall hereby have a continuing lien against each Lot to secure payment of delinquent assessments (annual assessments, special assessments and specific assessments), as well as interest at the Designated Interest Rate, late charges, and costs of collection, including, without limitation, court costs and attorneys' fees. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot, the amount of delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the payment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, perfection or priority of the lien.

b. **Enforcement of Lien - Judicial or Nonjudicial.** The lien may be enforced by judicial or nonjudicial foreclosure. Each Owner by accepting title to a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a private power of nonjudicial sale to be exercised in

accordance with Texas Property Code Ann. 51.002 (Vernon 1984), as it may be amended. The Board of Directors may appoint, from time to time, any person including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board of Directors' meeting.

c. **Subordination of Lien.** The lien of the assessments provided for herein is subordinate to the lien of any Recorded first mortgage or first deed of trust against a Lot.

d. **Effect of Conveyance.** An Owner that conveys title to a Lot shall not be liable for assessments that are attributable to the period after the conveyance of the Lot, except as provided in the following paragraph. However, a conveyance of title to a Lot shall not affect the assessment lien or relieve the Owner that conveys the Lot from personal liability for any assessments attributable to the period prior to the date of the conveyance, except as provided in the following paragraph.

e. **Effect of Foreclosure.** The foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will extinguish the lien of such assessment as to payments attributable to the period prior to the foreclosure, trustee's sale or deed in lieu thereof. However, a foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof will not relieve such Lot or Owner thereof from liability for any assessment attributable to the period after the foreclosure, trustee's sale or deed in lieu thereof. The foreclosure of a first mortgage, trustee's sale of a first deed of trust or a deed in lieu thereof shall not release the Owner whose Lot is being foreclosed, sold at a trustee's sale or conveyed pursuant to a deed in lieu from the Owner's obligation to pay assessments attributable to the period prior to the date of such foreclosure, trustee's sale or deed in lieu thereof. For purposes of this Declaration, the use of the term first in connection with a mortgage or deed of trust shall refer to the lien priority as compared to other mortgages or deeds of trust.

ARTICLE V THE ASSOCIATION

5.1 **The Association - Duties and Powers.** The Association is a Texas nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, and this Declaration. The Association shall continue to exist until the Association is dissolved, regardless if the corporate status expires or lapses. The Association shall have such rights, duties and powers as set forth herein and in the Articles of Incorporation and the Bylaws.

5.2 **Board of Directors.** The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws. The Board of Directors shall have the powers granted in this Declaration, the Articles of Incorporation, the Bylaws, and all powers provided by Texas law and all powers reasonably implied to perform its obligations and/or duties provided herein.

5.3 **Limitation on Liability.** The liability of an officer, director or committee member of the Association shall be limited as provided in the Articles of Incorporation.

5.4 Indemnification. Subject to the limitations and requirements of the Texas Nonprofit Corporation Act, as amended, and in the Bylaws, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including, without limitation, attorneys' fees, reasonably incurred in connection with any threatened, initiated or filed action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which a director's, officer's or committee member's liability is limited under the Articles of Incorporation. Additionally, subject to the limitations and requirements of the Texas Nonprofit Corporation Act, as amended, and in the Bylaws, the Association may voluntarily indemnify a person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against such person in that capacity and arising out of that capacity.

5.5 Limitations on Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless there is a 75% or greater vote approving such action. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided herein; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions to enforce written contracts with the Association. Except as authorized by said vote, the Board of Directors shall not be liable for failing or refusing to commence litigation.

5.6 Insurance.

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

(i) **Property Insurance.** Blanket property insurance covering loss or damage on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Common Maintenance Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits and/or endorsement related thereto sufficient to cover the full replacement cost of the insured improvements. The Association shall obtain endorsements to the property insurance policy to the extent the Board of Directors determines that particular endorsements are advisable and reasonably available to the Association. Such endorsements may include, without limitation: (i) a Replacement Cost Endorsement with an Agreed Amount Endorsement; (ii) a waiver of the insurer's right to repair and reconstruct instead of paying cash, if reasonably available; (iii) an Inflation Guard Endorsement; (iv) a Building Ordinance or Law Endorsement; and (v) a Steam Boiler and Machinery Coverage Endorsement.

(ii) **General Liability Insurance.** Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. Such coverage (including primary and any umbrella coverage) shall have a limit of at least

\$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. The Board of Directors may obtain a higher policy coverage if the Board of Directors determines that such additional coverage is advisable.

b. **Additional Insurance.** The Board of Directors may obtain additional insurance as the Board of Directors determines advisable, including, without limitation, the insurance set forth below. In determining whether to obtain additional insurance and/or endorsements thereto that are discretionary the Board of Directors shall use its own business judgment to determine if such insurance and/or endorsement is advisable based on the cost and availability of the insurance and/or the endorsement compared to the risks associated therewith.

(i) **Directors and Officers Liability Insurance.** Directors and officers liability insurance.

(ii) **Fidelity Insurance.** Fidelity insurance covering all parties responsible for handling Association funds in an amount determined by the Board of Directors. If fidelity insurance coverage is obtained the policy should contain, if reasonably available, a waiver of all defenses based upon the exclusion of persons serving without compensation.

(iii) **Flood Insurance.** Flood insurance covering any improvements located on the Common Area to the extent that the Board of Directors determines that the improvements have significant enough value and the risks related thereto justify the cost of such insurance.

(iv) **Workers Compensation Insurance.** Workers compensation insurance and employers liability insurance.

c. **Policy Requirements.** All insurance coverage obtained by the Association shall: (i) be written in the name of the Association and shall provide for a certificate of insurance to be furnished to the Association; (ii) contain a reasonable deductible; (iii) contain an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation of insurance; (iv) contain a provision or endorsement excluding Owner's individual policies from consideration under any other insurance clause, if reasonably available; and (v) contain a waiver of subrogation as to any claims against the Board of Directors and the Association's officers, employees and manager, and the Owners and their tenants, servants, agents and guests, if reasonably available.

d. **Review of Policies.** The Board shall annually review the types and amounts of insurance coverage for sufficiency.

e. **Compliance with Federal Agencies and Secondary Mortgage Market Requirements.** In addition to the foregoing insurance in Section 5.6, the Board of Directors may obtain such insurance coverage that the Board of Directors determines desirable to satisfy any applicable insurance requirements of any federal agency or secondary mortgage market entity, including, without limitation, the Federal Home Loan Mortgage Corporation ("**FHLMC**"), the Federal National Mortgage Association ("**FNMA**"), the U. S. Department of Veterans Affairs ("**VA**"), and the U.S. Department of Housing and Urban Development ("**HUD**"), to the extent applicable.

5.7 **Contracts; Management and Maintenance.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. This right shall include, without limitation, the right to enter into management, operational, or other agreements with other persons or entities; provided, any such agreement shall require approval of the Board of Directors. The Board of Directors may employ for the Association a management agent or agents at such compensation as the Board of Directors may establish, to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority.

5.8 **Books and Records.** The books and records of the Association shall be made available to the Members for inspection as provided in the Bylaws. In addition, Members may obtain copies, at a reasonable cost, of the books and records of the Association as provided in the Bylaws.

5.9 **Dissolution of Association; Conveyance of Assets.** If the Association is dissolved other than incident to a merger or consolidation, the assets both real and personal of the Association, shall be conveyed as provided in the Articles of Incorporation.

5.10 **Enforcement.** The Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with the applicable procedures set forth in the Bylaws. The Bylaws do not provide for an absolute right under all circumstances to notice and/or hearing either prior to or after the imposition of sanctions. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

a. **Fines.** The Board of Directors may impose reasonable monetary fines which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest, or invitee of the Owner of such Lot.

b. **Suspension of Voting Rights.** The Board of Directors may suspend an Owner's right to vote.

c. **Suspension of Rights to Use Common Area.** The Board of Directors may suspend any person's or entity's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board of Directors to limit ingress or egress to or from a Lot.

d. **Right of Self-Help.** The Board of Directors may exercise self-help or take action to enter upon the Lot to abate any violation of this Declaration;

e. **Right to Require Removal.** The Board of Directors may require an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the Lot, remove the violation, and restore the property to substantially the same condition as previously existed, without such action being deemed a trespass.

f. **Levy Specific Assessment.** The Board of Directors may levy a specific assessment to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration.

g. **Lawsuit; Injunction or Damages.** The Board of Directors has the right, but not the obligation, to bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

h. **Perform Maintenance.** In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot and/or Dwelling, the Association may record a notice of violation in the public records of the County and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a specific assessment.

The decision to pursue enforcement action, including the commencement of legal proceedings, in any particular case shall be left to the Board of Directors' sole and absolute discretion, except that the Board of Directors shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board of Directors may determine that, under the circumstances of a particular case, (i) the Association's position is not strong enough to justify taking any or further action; or (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or (iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

ARTICLE VI ARCHITECTURAL CONTROLS

6.1 **No Improvements Unless Approved by Architectural Control Authority - Except Improvements by Declarant.** No building, fence, wall, outbuilding, landscaping, pool, detached building, athletic facility, structure or improvement will be erected, altered, added onto or repaired upon any portion of any Lot without the prior written consent of the ACA. However, ACA approval is not required for (i) any improvements constructed, erected, altered, added onto or repaired by Declarant or a Builder designated in writing by Declarant to be exempt from the ACA approval requirements; (ii) any improvements to the interior of a Dwelling, except as provided herein; (iii) the painting or re-bricking of the exterior of any Dwelling in accordance with the approved color and design scheme approved by the ACA; or (iv) improvements for which the Declaration expressly states that the ACA's prior approval is not required. Any improvements pursuant to clauses (iii) and (iv) immediately preceding must be in compliance with any applicable ACA Standards.

6.2 **Architectural Control Authority.** The ACA shall have the sole and exclusive authority to perform the functions contemplated by the ACA in this Declaration. The purpose of the ACA is to enforce the architectural standards of the Property and to approve or disapprove plans for improvements proposed for the Lots. The ACA will have the authority to delegate its duties or

to retain the services of a professional engineer, management company, architect, designer, inspector or other person to assist in the performance of its duties. The cost of such services shall be included in the Common Expenses. The “ACA” or “**Architectural Control Authority**” shall be the following entity:

a. **Declarant - During Ownership of Development.** The Declarant shall be the ACA during the period that Declarant owns any real property within the Development, unless the Declarant in writing has terminated its rights as the ACA.

b. **Architectural Committee - After the Declarant’s Period.** The Architectural Committee shall be the ACA after the Declarant’s right to act as the ACA has either expired or voluntarily been terminated.

6.3 **Architectural Committee.** A committee to be known as the “Architectural Committee” consisting of a minimum of 3 members will be established after the Declarant’s right as the ACA has terminated. The members of the Architectural Committee will be appointed, terminated and/or replaced by the Board of Directors. The Architectural Committee will act by simple majority vote.

6.4 **Submission of Plans.** Prior to the initiation of construction of any work required to be approved by the ACA as provided in Section 6.1 above, the Owner (excluding Declarant and any Builder designated in writing to be exempt from the ACA approval requirements as provided herein) will first submit to the ACA a complete set of plans and specifications for the proposed improvements, including site plans, landscape plans, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACA for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. This approval process is separate and independent of any approval process required by a governmental entity.

6.5 **Plan Review.**

a. **Timing of Review and Response.** Upon receipt by the ACA of all of the information required by this Article VI, the ACA will have 30 days in which to review said plans. No correspondence or request for approval will be deemed to have been received until all requested documents have actually been received by the ACA in form satisfactory to the ACA. If the ACA requests additional information and the applicant fails to provide such information prior to the date stated in the ACA’s notice, then the application shall be deemed denied. If the applicable submittal is denied or deemed denied, then the applicant shall be required to re-apply if the applicant still desires to have the ACA consider the request. If the ACA fails to issue its written approval within 30 days after the ACA’s receipt of all materials requested by the ACA to complete the submission, then such failure by the ACA to issue its written approval shall be deemed approval. The ACA may charge a reasonable fee for reviewing requests for approval.

b. **Approval Considerations - Aesthetics.** The proposed improvements will be approved if, in the sole opinion of the ACA: (i) the improvements will be of an architectural style, quality, color and material that are aesthetically compatible with the improvements in the Development; (ii) the improvements will not violate any term herein or in the ACA Standards; and (iii) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property. Decisions of the ACA may be based on

purely aesthetic considerations. The ACA shall have the authority to make final conclusive and binding determinations on matters of aesthetic judgment and such determination shall not be subject to review so long as the determination is made in good faith and in accordance with the procedures set forth herein. Each Owner acknowledges that opinions on aesthetic matters are subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and as the ACA and their members change over time.

6.6 Timing of Completion of Approved Items. All work approved by the ACA shall be completed within one year after the approval by the ACA or such shorter period that the ACA may specify in the notice of approval, unless the completion is delayed due to causes beyond the reasonable control of the Owner, as determined by the ACA. All work and related improvements shall be in compliance with the items approved by the ACA.

6.7 Improvements Impact on Drainage. With respect to any improvements performed on a Lot and/or any alterations to the yard, the Owner shall take proper precautions to insure that such improvements do not (i) alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling, or (ii) allow water to collect near the foundation of the Dwelling. Although the ACA may comment on and/or deny the approval of plans because of the impact of the proposed improvements or alterations on surface water drainage, the ACA's comments or approval shall not constitute or be construed as a representation, warranty or guaranty that adverse surface water drainage problems will not occur and shall not be relied upon as such. The Owner is responsible for taking the necessary actions in order to avoid any surface water drainage problems, including, without limitation, engaging the services of a qualified consultant.

6.8 No Waiver. The approval by the ACA of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ACA under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

6.9 Variances. The ACA may authorize variances from strict compliance with the requirements herein, in any ACA Standards or any required procedures: (i) in narrow circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence; or (ii) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. 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 as the sole or primary reason for requesting a variance shall not be considered a hardship warranting a variance. No variance shall be contrary to the terms of this Declaration and no variance shall be effective unless in writing or estop the ACA from denying a variance in other circumstances.

6.10 Architectural Control Authority Standards. The ACA may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, ACA Standards. The ACA Standards may not conflict with the terms of this Declaration.

6.11 Enforcement; Non-Conforming and Unapproved Improvements. If there are any significant or material deviations from the approved plans in the completed improvements, as determined by the ACA, in their sole and absolute discretion, such improvements will be in violation of this Article VI to the same extent as if made without prior approval of the ACA. The Association

or any Owner may maintain an action at law or in equity for the removal or correction of (i) the non-conforming improvement or alteration, and/or (ii) any improvement or alternation to any improvement on any Lot that is not approved by the ACA.

6.12 **Limitation of Liability.** Neither the Declarant, the Association, the Board of Directors, nor the ACA shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board of Directors, the ACA nor any member of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling and/or Lot. The ACA and its members shall be defended and indemnified by the Association as provided in Section 5.4 herein.

ARTICLE VII USE RESTRICTIONS AND COVENANTS

7.1 **Single Family Residential Use.** All Lots and Dwellings will be used and occupied for single-family residential purposes only and no trade or business may be conducted in or from any Lot and/or Dwelling, except that an Owner of the Dwelling may conduct business activities within the Dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve unreasonable visitation to or from the Dwelling by clients, customers, suppliers or other business invitees; and (iv) the business activity is ancillary to the residential use of the Dwelling and does not diminish the residential character of the Property or constitute a nuisance, or a hazardous or offensive use, or threatens the security or safety of the other residents in the Property. The determination of whether a business activity satisfies the foregoing requirements set forth in clauses (i) through (iv) above in this paragraph shall be made by the Board of Directors in their sole and absolute discretion. The business activity prohibition will not apply to the use of any Dwelling by Declarant or any Builder as a model home, construction office and/or sales office; or the use of any Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot by Declarant or any Builder.

7.2 **Parking of Motor Vehicles.** No vehicles or similar equipment will be parked or stored in an area visible from any street within the Property, except passenger automobiles, motorcycles, passenger vans and pick-up trucks may be parked in any garage or driveway if such vehicle (i) has less than 1 ton carrying capacity; (ii) has less than 3 axles; (iii) is in operating condition; and (iv) is generally in daily use as a motor vehicle on the streets and highways of the State of Texas. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement, provided, however, that this restriction will not apply to any driveways, roads, parking lots or other areas designated by the Board of Directors as intended for such vehicular use. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot or a street within the Property, except within an enclosed garage. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or portions of any Lot that are visible from any street within the Property.

7.3 **Trailers, Boats, Commercial and Recreational Vehicles.** No campers, boats, trailers, motor homes, travel trailers, camper bodies, golf carts, recreational vehicles,

non-passenger vehicles, vehicles with 3 or more axles or greater than 1 ton carrying capacity, and/or equipment or accessories related thereto may be kept on any Lot, unless such item is in operable condition and such item is (i) kept fully enclosed within a garage located on such Lot; (ii) kept fully screened from view by a screening structure or fencing approved by the ACA; (iii) temporarily parked on any street within the Property or on a Lot for the purpose of loading or unloading; or (iv) a commercial vehicle that is in use for the construction, maintenance or repair of a Dwelling or Lot in the immediate vicinity. The Board of Directors will have the absolute authority to determine from time to time whether an item is in operable condition and complies with the requirements in clauses (i) through (iv) above in this paragraph. Upon an adverse determination by the Board of Directors, the Owner will cause the item to be removed and/or otherwise brought into compliance with this paragraph. Notwithstanding any provision herein, no trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time.

7.4 Fences.

a. **Required Fencing.** The backyard of each Lot must be enclosed with a perimeter fence.

b. **Type of Fencing.** All perimeter fences will be wood, brick and/or masonry except for Special Fencing which may be wrought iron. All fencing shall comply in all respects (including size and location) with applicable City requirements. All perimeter fences (except Special Fencing, which may be less than 6 to 8 feet) shall be between 6 and 8 feet in height unless another height is approved by the ACA and shall be a color approved by the ACA. No fences may be painted, unless otherwise approved in writing by the ACA. Except for Special Fencing, no chain-link, metal, cloth or agricultural fences may be built or maintained on any Lot unless such fence is located within the perimeter fence in such a manner that it is not visible from any street, alley, park, Common Area or public area, unless otherwise approved by the ACA. The portion of all fences which exterior or side faces a street adjoining such Owner's Lot (front, side or rear streets, but not alleys) or which exterior or side faces a Common Area, open space, park or other recreational area adjoining such Owner's Lot (which area may be separated by an alley) shall have the smooth surface of the fence materials facing the applicable street or Common Area. The fence posts and bracing boards on such front, side and rear fences shall face the interior of the fenced yard.

c. **Location of Fence.** No fence, wall or hedge will be placed on any Lot in a location nearer the street than the front building setback line for such Lot. The foregoing shall not limit or restrict fences erected in conjunction with model homes or sales offices. In addition to the foregoing, easements may also restrict the placement of fences.

d. **Maintenance of Fencing.** Except for Association Fencing, each Owner shall maintain the portion of fencing on such Owner's Lot in a presentable condition and shall make all repairs and replacements thereto, except that Owners adjoining a Common Fence (as provided in the following Section) shall share in the cost of such maintenance as provided in the following Section. The Association shall be responsible to maintain the Association Fencing and the Association Fencing may not be changed, repaired or altered without the ACA approval. All repairs and replacements to the perimeter fencing and Special Fencing must be done using the same type and color of materials so that such fencing does not appear to have been repaired or replaced, except to the extent of the new

appearance of the repaired or replaced materials. Except as provided in this paragraph, fencing (including, without limitation, Special Fencing and Association Fencing) shall not be changed or modified without the prior written consent of the ACA.

e. **Common Fencing.** Except for Association Fencing, side and rear yard fences that are installed by Declarant or the builder of the Dwelling to separate adjacent Lots as a common boundary fence (the "**Common Fence**") shall be maintained jointly by the Owners whose Lot adjoins such Common Fence and the costs associated therewith shall be shared equally by said Owners. Owners are not released from the joint maintenance obligation even if an Owner constructs a second fence along or near the Common Fence, unless the other Owner agrees in writing otherwise and the ACA's approval is obtained. If the Owner's disagree regarding the timing, cost or other applicable issue related to the repair or replacement of a Common Fence or portion thereof, then either Owner may (i) make the repair or replacement (provided any applicable ACA approval is obtained) and seek collection of 2 of the cost of repair or replacement at Arbitration (as defined herein); and/or (ii) seek payment of one-half (1/2) of the cost of repair or replacement at Arbitration, subject to the repair or replacement being made. The term "**Arbitration**" shall mean binding arbitration pursuant to the rules of the American Arbitration Association or such other person or entity approved by the applicable Owners.

7.5 **Outbuildings, Sheds and Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, and sheds shall be erected, placed or constructed upon any Lot, unless (i) the item is approved by the ACA prior to the installation or construction of the item; (ii) such item is compatible with the Dwelling to which it is appurtenant in terms of its design and material composition; (iii) the exterior paint and roofing materials of such outbuildings shall be consistent with the existing paint and roofing materials of the Dwelling; (iv) the outbuilding is located within a backyard that has a fence that completely encloses the backyard; (v) the height of the structure walls shall not be greater than eight (8) feet; and (vi) the outbuilding shall not be greater than 225 square feet of floor space.

7.6 **Animals.** No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except that a reasonable number of cats, dogs or other generally recognized household pets may be permitted on any Lot; however, those pets which are permitted to roam free, or in the sole discretion of the Board of Directors, make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots shall be removed from the Lot upon the request of the Board of Directors. If the animal owner fails to remove the animal from the Lot after the Board of Directors' request, the Board of Directors may remove the animal, in addition to imposing such other sanctions as are authorized by the Declaration and the Bylaws. All animals will be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All persons bringing an animal onto the Common Maintenance Areas shall be responsible for immediately removing any solid waste of said animal.

7.7 **Signs.**

a. **Sign Restrictions.** Except for Entry Signs, no sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following: (i) an Owner may erect one (1) sign on a Lot advertising the Dwelling for sale or rent, provided that the sign does not exceed two (2) feet by three (3) feet in size; (ii) an Owner may temporarily place one

(1) sign on a Lot advertising the “open house” of the Dwelling, provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during actual open house hours; (iii) signs or billboards may be erected by the Declarant or any Builder designated in writing by the Declarant as having the right to erect such signs or billboards; (iv) an Owner may temporarily place one (1) sign on a Lot advertising a “garage sale”, provided that the sign does not exceed two (2) feet by three (3) feet in size and the sign may only be displayed during the garage sale hours; or (v) 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 will not be erected more than 60 days in advance of the election to which they pertain and are removed within 15 days after the election. A permitted or authorized sign may not contain any language or symbols on the sign that are not directly related to the authorized purpose of the sign. The ACA may in the ACA Standards permit additional signs and/or place additional restrictions or limitations on the signs permitted in this Declaration, provided that such additional restrictions or limitations do not conflict with the terms herein. The Association will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing. Removal shall not subject the Association to any liability in connection with such removal.

b. **Entry Signs.** The Association shall be responsible to maintain the Entry Signs.

7.8 **Trash; Containers and Collection.** No garbage or trash shall be placed or kept on any Lot, except in covered sanitary containers. In no event shall such containers be stored, kept, placed or maintained on any Lot where visible from the location on the street that is immediately in the front of the Dwelling except solely on a day designated for removal of garbage, then such containers may be placed in the designated location for pick-up of such garbage and the container will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant or any builder designated by Declarant.

7.9 **Nuisances.** No noxious or offensive activity, including, without limitation, unreasonable smells, noise or aesthetics, will be carried on upon any Lot, nor will anything be done thereon which the Board of Directors determines, in its sole and absolute discretion, is or may become an unreasonable source of annoyance or nuisance to the Property.

7.10 **Antennae and Satellite Dishes.** Except with the written permission of the ACA or as provided herein, exterior antennae, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind may not be placed on the exterior of any Dwelling or on any portion of the Lot outside the Dwelling, except that (i) antennas, satellite dishes or other apparatuses that are one meter or less in diameter and that are designed to receive transmissions other than television broadcast signals shall be permitted; and (ii) antennas or satellite dishes designed to receive television broadcast signals shall be permitted. Any of the foregoing permitted devices and any other device permitted by the ACA (a “**Permitted Device**”), must be located in an area where such Permitted Device is not visible (for aesthetic reasons) from any portion of the street in front of the applicable Lot with the apparatus. However, if the Owner determines that the Permitted Device cannot be located in compliance with the foregoing non-visibility requirement without precluding reception of an acceptable quality signal, then the Owner may install the Permitted Device in the least conspicuous alternative location on the Lot where an acceptable quality signal can be obtained. The ACA in the ACA Standards may include rules or provisions regarding the type of additional Permitted Devices and/or the placement

of Permitted Devices, provided that such ACA Standards do not conflict with the terms of this Section 7.10 and do not unreasonably increase the cost of installation, maintenance or use of the Permitted Device. A Permitted Device that complies with the provisions of this paragraph and the ACA Standards shall not require the ACA's approval prior to installation. However, the ACA shall be the sole and exclusive authority for purposes of determining if the item or device complies with the provisions of this paragraph and the ACA Standards.

7.11 Air-Conditioning Units. Air-conditioning apparatuses must be installed on the ground behind the rear of the Dwelling or on the ground near the side of the Dwelling. No air-conditioning apparatus or evaporative cooler may be attached to any wall or any window of any Dwelling.

7.12 No Solar Collectors. Except with the written permission of the ACA, no solar collector panels or similar devices may be placed on or around any Dwelling.

7.13 No Temporary Structures as a Residence. No structure of a temporary character, including, without limiting the generality thereof, any tent, shack, garage or barn will be used on any Lot at any time as a residence, either temporarily or permanently; except that camping out in a tent, that is erected in the back yard behind a fully screened fence, is permitted provided that such activity does not become or constitute a nuisance or unreasonable source of annoyance to the occupants of other Lots as determined by the Board of Directors in its sole and absolute discretion. This restriction will not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

7.14 Sidewalks. The Owner shall be responsible for maintaining any sidewalk located on such Owner's Lot to the extent required by the City.

7.15 Landscaping Maintenance. All yards must be sodded or grassed within a reasonable time period not to exceed seven (7) months after the initial conveyance of a Lot with a Dwelling thereon to an Owner other than a Builder. Decorative ground cover rock (excluding flower beds and planters with mulch rather than rock) in the front and side yard may not exceed 10% of the total area of the front and side yard. All landscaping located on any Lot, including grass lawns, must be properly maintained at all times by the Owner of such Lot in a trimmed, well-kept and clean condition, as determined by the Board of Directors, in its sole and absolute discretion. Each Owner will keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. In addition, each Owner shall on a regular basis remove weeds from the yard, including, without limitation, flower beds and planter areas.

7.16 Exterior Improvement Maintenance. All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of such Lot in a presentable well-kept and clean condition, as determined by the Board of Directors, in its sole and absolute discretion.

7.17 Garages. Each Dwelling must have a garage that will accommodate a minimum of two (2) automobiles. All garages must comply with City requirements. Garages may be used as Declarant's or a Builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant or Builder as sales offices, all

garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carports are permitted on a Lot.

7.18 **Clothes Hanging Devices.** No clothes hanging devices exterior to a Dwelling are to be constructed or placed on the Lot, except within the Dwelling.

7.19 **Window Treatment.** No Aluminum foil, newspaper, reflective film or similar treatment will be placed on windows or glass doors of a Dwelling. Bed sheets and similar linens may only be used during the first 90 days after such Owner acquires title to the Lot.

7.20 **Mining.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted upon or in any Lot, nor will 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 will be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

7.21 **Mail Boxes.** Mail boxes shall be of similar type as originally installed, unless the ACA approves additional types of mail boxes.

7.22 **Athletic and Recreational Facilities.** No outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts may be placed on a Lot unless (i) such item is placed within a backyard that has a fence that completely encloses the backyard and the location and the item does not exceed 10 feet in height, or (ii) such item is a temporary and movable facility that is stored each night in the garage, the Dwelling or other fully screened area. Notwithstanding the foregoing, basketball goals and any other recreation equipment designated by the ACA may be located on any portion of the Lot (including side yards) that is behind any portion of the rear of the Dwelling.

7.23 **Lighting; Exterior Holiday Decorations.** Lighting and/or decorations on a Lot may not be used or placed in a manner which, in the Board of Directors' sole and absolute discretion, constitutes a nuisance or an unreasonable source of annoyance to the occupants of other Lots. Except for lights and decorations within the interior of a Dwelling that are not displayed in a window, lights and decorations that are erected or displayed on a Lot in commemoration or celebration of publicly observed holidays may not be displayed more than six (6) weeks in advance of that specific holiday and must be removed within 30 days after the holiday has ended.

7.24 **Lawn Decorations and Sculptures.** The Owner must have the approval of the ACA to place any decorations, sculptures, fountains, flags and similar items on any portion of such Owner's Lot except the interior of the Dwelling, unless (i) such item is placed within a backyard completely enclosed by a fence which blocks the view of the item at ground level; and (ii) such item is no taller than the fence.

7.25 **No Lot Consolidation or Division.** No Owner, other than Declarant, may divide any Lot and/or consolidate any adjoining Lots and/or any portion thereof.

7.26 **Drainage Alteration Prohibited.** Unless approved by the ACA, no Owner will: (i)

alter the surface water drainage flows of a Lot as originally established at the time of the initial construction of the Dwelling; or (ii) install landscaping or other improvements that may interfere with, obstruct or divert drainage flows established by the Declarant or any Builder. The foregoing shall not prevent or limit the Declarant from performing any grading work and/or changing any surface water drainage flow on any Lot.

7.27 Construction Activities. This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by an Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Board of Directors in its sole good faith judgment, the Board of Directors will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the Board of Directors may contract for or cause such debris to be removed, and the Owner of such Lot will be liable for all expenses incurred in connection therewith.

7.28 Declarant and Builder Development and Construction. Notwithstanding any other provision herein, Declarant, and its successors and assigns, and any Builders, will 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 Dwellings on the Property.

ARTICLE VIII COMMON AREAS

8.1 Association to Hold and Maintain. The Association will own all Common Areas in fee simple title. The Association shall maintain the Common Area and any improvements and landscaping thereon in good repair, unless the Association obtains the written consent of the City to modify or eliminate such maintenance. The Association shall also maintain the Common Maintenance Areas to the extent the Board of Directors determines that such maintenance is desirable, except that the Association is obligated to maintain the Landscape Tract and Entry Signs, unless the Association obtains the written consent of the City to modify or eliminate such maintenance.

8.2 Use of Common Areas at Own Risk. Each Owner, by acceptance of a deed to a Lot, acknowledges that the use and enjoyment of any Common Area recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any Builder are not insurers of personal safety and that each person using the Common Area assumes all risks of personal injury and loss or damage to property, resulting from the use and enjoyment of any recreational facility or other portion of the Common Area. Each Owner agrees that neither the Association, the Board of Directors and any committees, any Builder, nor Declarant shall be liable to such Owner or any person claiming any

loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the use of any recreational facility or other portions of the Common Area, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant, or any Builder. THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.

8.3 Condemnation of Common Area. In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association as the Board of Directors determines, in its business judgment, including, without limitation, (i) to purchase additional Common Areas to replace that which has been condemned, (ii) to reconstruct or replace on the remaining Common Area any improvements that were on condemned Common Area, (iii) to pay for Common Expenses, or (iv) to be distributed to each Owner on a pro rata basis.

8.4 Damage to Common Area. If the Common Area or improvements on the Common Maintenance Area are damaged and if there are insurance proceeds sufficient to repair such damage to its prior condition, then the Association shall cause such damage to be repaired or reconstructed unless (i) there is a 67% or greater vote within 90 days after the loss not to repair or reconstruct, and (ii) the City has consented, in writing, that such Common Area does not have to be repaired and/or reconstructed. If 67% vote is cast not to repair or reconstruct such damage and the City consents in writing, the damaged property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association.

8.5 Conveyance of Common Areas by Declarant to Association. Declarant shall have the right to convey title to any portion of the Property owned by Declarant, or any easement interest therein, to the Association as Common Area, and the Association shall be required to accept such conveyance. Property conveyed by Declarant to the Association as Common Area shall be conveyed free and clear of monetary liens and encumbrances other than taxes and assessments imposed by governmental entities or districts authorized by Texas law. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the public land records of the County.

8.6 Rights of the City of McKinney - Common Area and Landscape Tract and Entry Signs. In the event that the Association, its successors or assigns shall fail or refuse to adequately maintain the appearance and condition of the Common Areas and the Landscape Tract and Entry Signs which the Association is obligated to maintain hereunder, the City shall have the right and may assume the duty of performing all such maintenance obligations of the Association upon (a) giving written notice thereof to the Association, and (b) the expiration of ten (10) days after receipt by the Association, its successors or assigns, of written notice specifying in detail the nature and extent of the failure to maintain without such failure being remedied. Upon assuming such maintenance obligations, the City may levy an assessment upon each lot on a pro-rata basis for the entire cost of such maintenance, which assessment shall constitute a lien upon the Lots against which each assessment is made. During the period the City has a right and assumes the obligation

to maintain and care for the Common Areas and the Landscape Tract and Entry Signs, the Association shall have no obligation or authority with respect to such maintenance. The right and authority of the City to maintain the Common Areas and the Landscape Tract and Entry Signs shall cease and terminate when the Association, its successors or assigns, shall present to the City reasonable evidence of its willingness and ability to resume maintenance of the Common Areas and the Landscape Tract and Entry Signs. In the event the City assumes the duty of performing the maintenance obligations of the Association as provided herein, the City, its agents, representatives and employees shall have the right of access to and over the Common Areas and the Landscape Tract and Entry Signs for the purpose of maintaining, improving and preserving the same; and in no event shall the City be liable to the Association or any Owner or their respective heirs, executors, administrators, devisees, personal representatives, successors and assigns for (i) any acts or construction relating in any manner to maintaining, improving and preserving the Common Areas and the Landscape Tract and Entry Signs, or (ii) failure to perform such maintenance. The provisions in this Section 8.6 and the provisions in Section 8.1 that benefit the City may not be amended without the written consent of the City.

ARTICLE IX EASEMENTS

9.1 **Easement for Utilities on Common Area.** During the period that Declarant owns any real property within the Development, the Declarant, on behalf of itself, reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for the construction, installation, use and maintenance for utilities, including, without limitation, water, sewer, electric, cable television, telephone, natural gas and storm water and drainage related structures and improvements. The Association will also have the right to grant the easements described in this paragraph.

9.2 **Easement to Correct Drainage on Property.** During the period that Declarant owns any real property within the Development, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where the Dwelling is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.3 **Easement for Right to Enter Lot.** If the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association will have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is

caused by the Association's willful misconduct or gross negligence.

9.4 **Temporary Easement to Complete Construction.** All Lots will be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors, and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Dwellings and landscaping upon adjacent Lots, provided that such easement will terminate as to any Lot 24 months after the date such Lot is conveyed an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

9.6 **Easement for Entry Monument Signs and Association Fencing.** To the extent the Entry Monument Signs or the Association Fencing are not located on Common Area, the Declarant hereby reserves for the benefit of Declarant and the Association an exclusive easement for the purpose of placing and maintaining the Entry Monument Signs and the Association Fencing on the real property subject to the Landscape and Wall Easement.

ARTICLE X ANNEXATION AND WITHDRAWAL

10.1 **Annexation by Declarant.** Until 10 years after the recording of this Declaration in the public records, Declarant may, at its sole option, annex the Annexable Property or any portion thereof into the Association and subject such Annexable Property or portions thereof to the terms hereof and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. The annexation shall not require the approval of any person other than the owner of the property being annexed. In the annexation document, Declarant may amend the Declaration to cause the terms Common Area, Entry Signs and other terms necessary to appropriately address and describe the new applicable areas of land within the real property being annexed. The foregoing amendment shall not require the approvals set forth in Section 11.2 herein.

10.2 **Annexation by Association.** The Association may annex any portion of the Annexable Property by a 67% or greater Class Vote approving such action and the consent of the Owner of such portion of the Annexable Property.

10.3 **Recording of Annexation.** The annexation of any portion of the Annexable Property shall be evidenced by a written document recorded in the public land records of the County.

10.4 **No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any portion of the Annexable Property, and no owner of any property excluded from the Association shall have any right to have such property annexed thereto.

10.5 **Withdrawal of Property.** Declarant may amend this Declaration to withdraw real property without a Dwelling thereon from the definition of the Property and from the coverage of this Declaration, provided that (i) the withdrawal is not unequivocally contrary to the overall, uniform

scheme of development of the Property; and (ii) the owner of real property to be withdrawn must consent. Such amendment shall not require the consent of any person, Member or Owner (except as provided in this Section 10.5 (ii)), except a 67% or greater Class Vote approving such action is required if the real property to be withdrawn is Common Area.

ARTICLE XI MISCELLANEOUS

11.1 Declaration Term - Perpetual. Unless 90% of all the votes approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless Recorded. Notwithstanding the above, the Declaration may not be terminated without the prior written consent of the City.

11.2 Amendments to Declaration. This Declaration may be amended by a 67% vote, except that Declarant, at its sole discretion and without a vote or the consent of any other party, may modify, amend or repeal this Declaration: (i) at any time prior to the conveyance of the first Lot; (ii) as necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (iii) as necessary to comply with the requirements of VA, or HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency or secondary mortgage market entity; or (iv) as necessary to clarify or to correct technical, typographical or scrivener's errors; provided, however, any amendment pursuant to clause (ii), (iii) and/or (iv) immediately above must not have a material adverse effect upon any right of any Owner. Any amendment to this Declaration shall be effective upon Recording.

11.3 Enforcement by Association and/or Owner. The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

11.4 Remedies; Cumulative. In the event any Lot does not comply with the terms herein or any Owner fails to comply with the terms herein, the Association and/or any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and any rules and regulations, and those which may be available at law or in equity, including, without limitation, enforcement of any lien, damages, injunction, specific performance, judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy, but instead shall be cumulative.

11.5 Notice to Association of Sale or Transfer. Any Owner (other than Declarant) desiring to sell or otherwise transfer title to his or her Lot shall give the Board of Directors written notice of the name and address of the purchaser or transferee, within 30 days after the date of such transfer of title, and such other information as the Board of Directors may reasonably require. The Association may charge a transfer fee upon the conveyance of title to a Lot for purposes of covering the reasonable administrative costs to change the records.

11.6 Limitation on Interest. All agreements between any Owner and the Association and/or Declarant are expressly limited so that the amount of interest charged, collected, or received on account of such agreement shall never exceed the maximum amount permitted by applicable law. If, under any circumstances, fulfillment of any provision of this Declaration or of any other document requires exceeding the lawful maximum interest rates, then, ipso facto, the obligation shall be reduced to comply with such lawful limits. If an amount received by the Association and/or Declarant should be deemed to be excessive interest, then the amount of such excess shall be applied to reduce the unpaid principal and not to the payment of interest. If such excessive interest exceeds the unpaid balance due to the Association and/or Declarant, then such excess shall be refunded to Owner.

11.7 Construction and Interpretation. This Declaration shall be liberally construed and interpreted to give effect to its purposes and intent, except as otherwise required by law.

11.8 Notices. Except as otherwise provided in the Bylaws or this Declaration, all notices, demands, bills, statements and other communications under this Declaration shall be in writing and shall be given personally or by mail. Notices that are mailed shall be deemed to have been duly given three (3) days after deposit, unless such mail service can prove receipt at an earlier date. Owners shall maintain one mailing address for a Lot, which address shall be used by the Association for mailing of notices, statements and demands. If an Owner fails to maintain a current mailing address for a Lot with the Association, then the address of that Owner's Lot is deemed to be such Owner's mailing address. If a Lot is owned by more than one person or entity, then notice to one co-owner is deemed notice to all co-owners. Attendance by a Member at any meeting shall constitute waiver of notice by the Member of the time, place and purpose of the meeting. Written waiver of notice of a meeting, either before or after a meeting, of the Members shall be deemed the equivalent of proper notice

11.9 Not a Condominium. This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, et seq.

11.10 Severability. Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order will in no manner affect any other provisions which will remain, in full force and effect.

11.11 Rights and Obligations Run With Land. The provisions of this Declaration are covenants running with the land and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. No Lot is exempt from the terms set forth herein. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, whether or not mention thereof is made in said deed.

11.12 Disclaimer Regarding Security. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be

held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees, and licensees that the Association, its Board of Directors and committees and the Declarant are not insurers and that each person using any portion of the Property assumes all risks for loss or damage to persons, to Lots and to the contents of Lots resulting from acts of third parties.

11.13 **Attorneys' Fees and Court Costs.** If litigation is instituted to enforce any provision herein, then the prevailing party shall be entitled to all attorneys' fees and court costs related to such legal action.

11.14 **Gender.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

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

11.16 **Conflicts.** In the event of conflict between this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration will control.

11.17 **Exhibits.** All exhibits referenced in this Declaration as attached hereto are hereby incorporated by reference.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the day and year written below.

CENTEX HOMES,
a Nevada general partnership

By: Centex Real Estate Corporation,
a Nevada corporation
Its: managing general partner

By: 
Name: Lee Thompson

Its: Division President

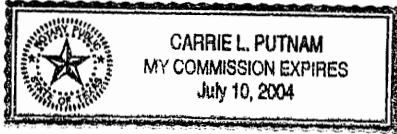
Date: 02/24, 2004

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

The foregoing instrument was acknowledged before me on this the 24th day of February, 2004, by Lee Thompson (personally known to me), Division President of Centex Real Estate Corporation, a Nevada corporation, on behalf of the corporation in its capacity as managing general partner of Centex Homes, a Nevada general partnership.



Carrie L. Putnam

Notary Public, State of Texas

Notary's Name Printed:

Carrie L. Putnam

My Commission Expires: 7-10-04

AFTER RECORDING RETURN TO:

Centex Homes
Attn: Legal Department
2800 Surveyor Blvd., Bldg. #1
Carrollton, Texas 75006-5143

EXHIBIT "A"

The Property

Lots 1 through 31 (inclusive), Block A; Lots 1 through 16 (inclusive), Block B; Lots 1 through 50 (inclusive), Block C, Franklin Heights, an addition to the City of McKinney, Collin County, Texas, according to the plat thereof recorded in Volume P, Page 263, Plat Records, Collin County, Texas.

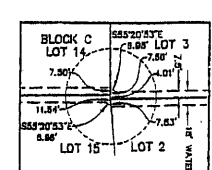
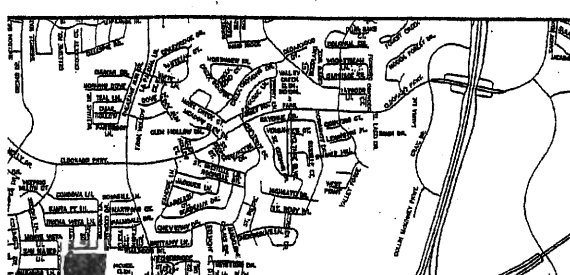
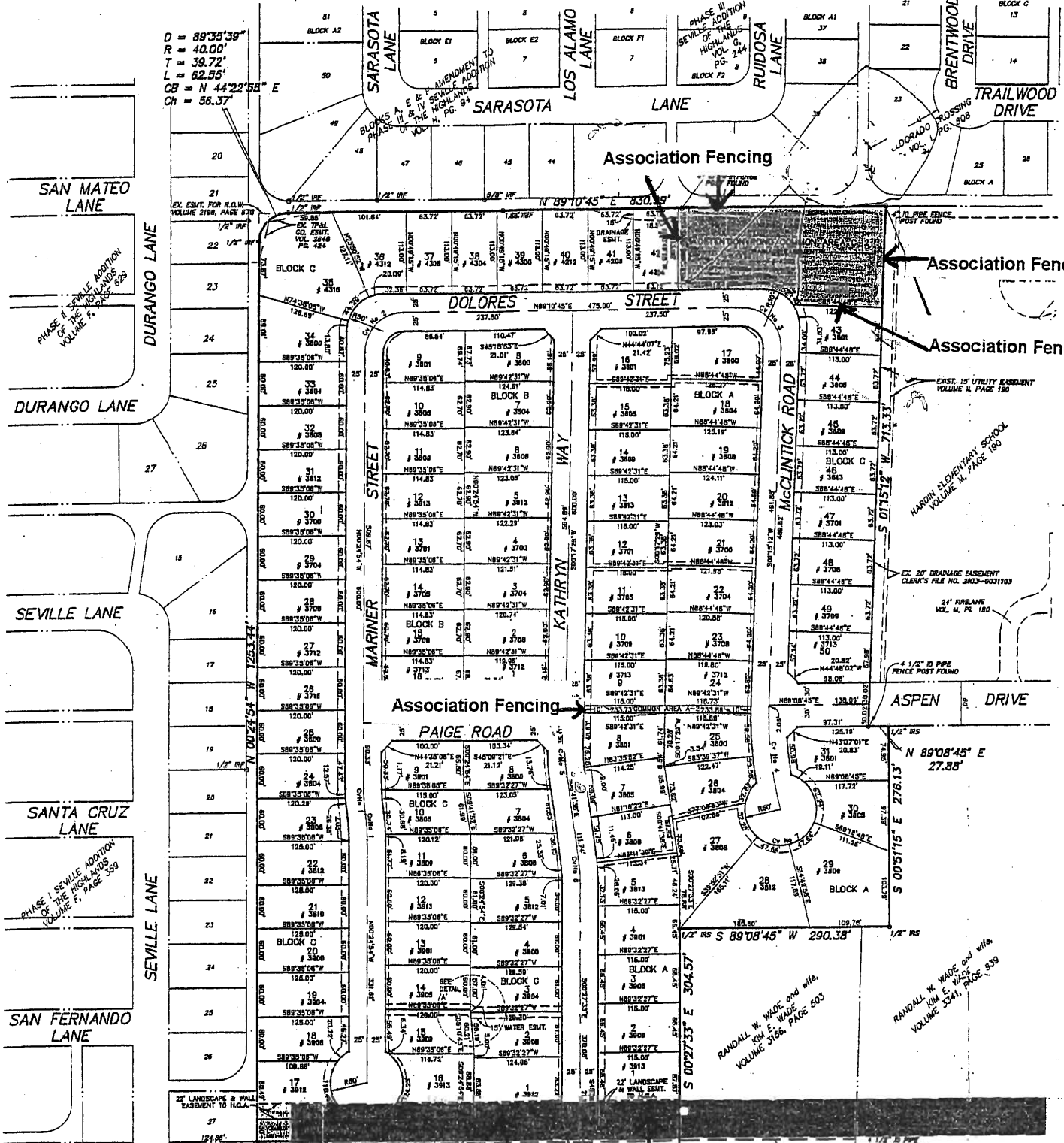
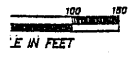
EXHIBIT "B"

Common Area

Lots A-1 and A-2, Block A and Lots C-1 and C-2, Franklin Heights, an addition to the City of McKinney, Collin County, Texas, according to the plat thereof recorded in Volume P, Page 263, Plat Records, Collin County, Texas.

EXHIBIT "C"

D = 89°35'39"
 R = 40.00'
 L = 39.72'
 CB = 82.55'
 CB = N 44°22'55" E
 Ch = 56.37'



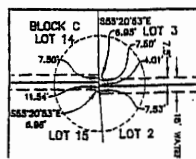
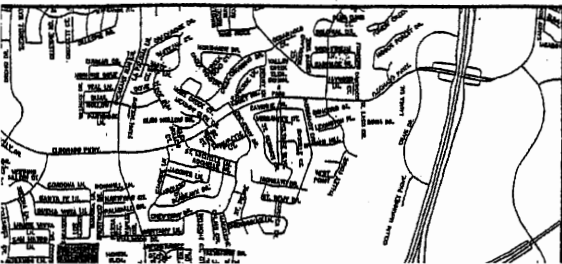
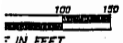
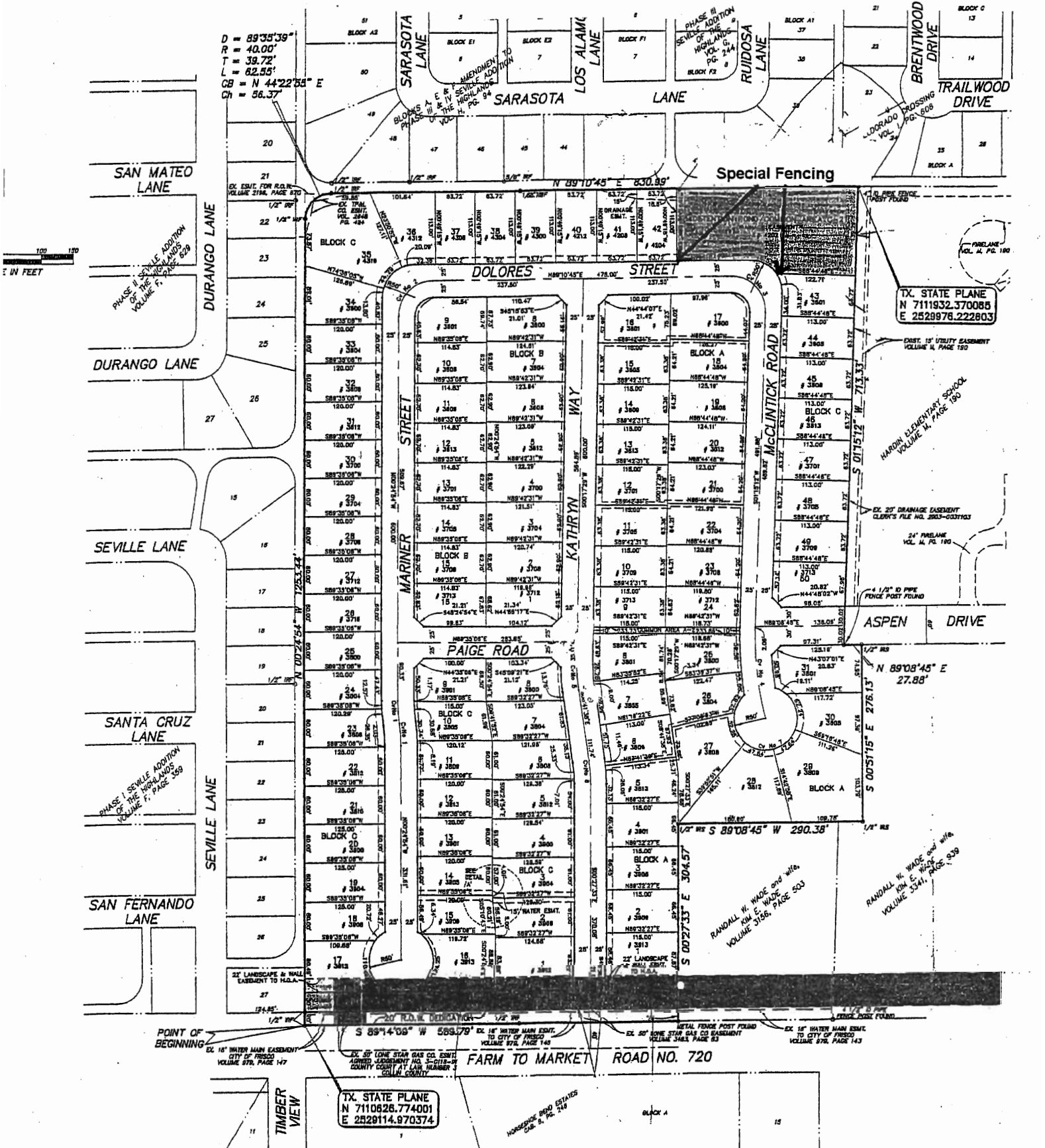
CURVE DATA

Cv No	Interior	Centerline	Exterior			
1	R	8708.35'	8708.35'	8708.35'	Δ	850.07'
	R	225.00'	250.00'	275.00'	R	225.00'
	L	15.85'	17.72'	19.49'	Y	17.88'
5	L	31.84'	35.35'	38.82'	L	35.28'
					R	250.00'
					L	38.21'

TX. STATE PLANE
 N 7110826.774001
 E 2529114.970374

Note: H.O.A. denotes "Homeowners Association"

EXHIBIT "E"



CURVE DATA

Cv No	Interior	Centerline	Exterior			
1	Δ 87°03'	87°03'	87°03'	5	Δ 89°07'	89°07'
	R 225.00'	230.00'	275.00'		R 225.00'	230.00'
	15.68'	17.72'	19.49'		T 17.69'	18.64'
	18.25'	19.56'	21.25'		T 18.27'	19.83'

Note: H.O.A. denotes "Homeowner's Association"

TX. STATE PLANE
N 7110826.774001
E 2528114.970374

TX. STATE PLANE
N 7111932.370085
E 2528976.222803

FARM TO MARKET ROAD NO. 720

POINT OF BEGINNING
S 89°14'08" W 583.79' EX. 16" WATER MAIN EASEMENT TO CITY OF PRISDO VOLUME 976, PAGE 147
EX. 30" LONE STAR GAS CO. EASEMENT TO CITY OF PRISDO COUNTY COURT AT LAW, HALL COUNTY, TEXAS VOLUME 976, PAGE 148
EX. 50" LONE STAR GAS CO. EASEMENT TO CITY OF PRISDO COUNTY COURT AT LAW, HALL COUNTY, TEXAS VOLUME 976, PAGE 148
METAL FENCE POST FOUND TO CITY OF PRISDO VOLUME 976, PAGE 143
EX. 16" WATER MAIN EASEMENT TO CITY OF PRISDO VOLUME 976, PAGE 147

RANDALL W. WADE and wife
VOLUME 3541, PAGE 509

RANDALL W. WADE and wife
VOLUME 3566, PAGE 503

EX. 20" DRAINAGE EASEMENT CLERY'S FILE NO. 2903-003103

24" PARALLEL VOL. 4, PG. 190

HARDON ELEMENTARY SCHOOL VOLUME 11, PAGE 190

EX. 15" UTILITY EASEMENT VOLUME 4, PAGE 190

24" PARALLEL VOL. 4, PG. 190

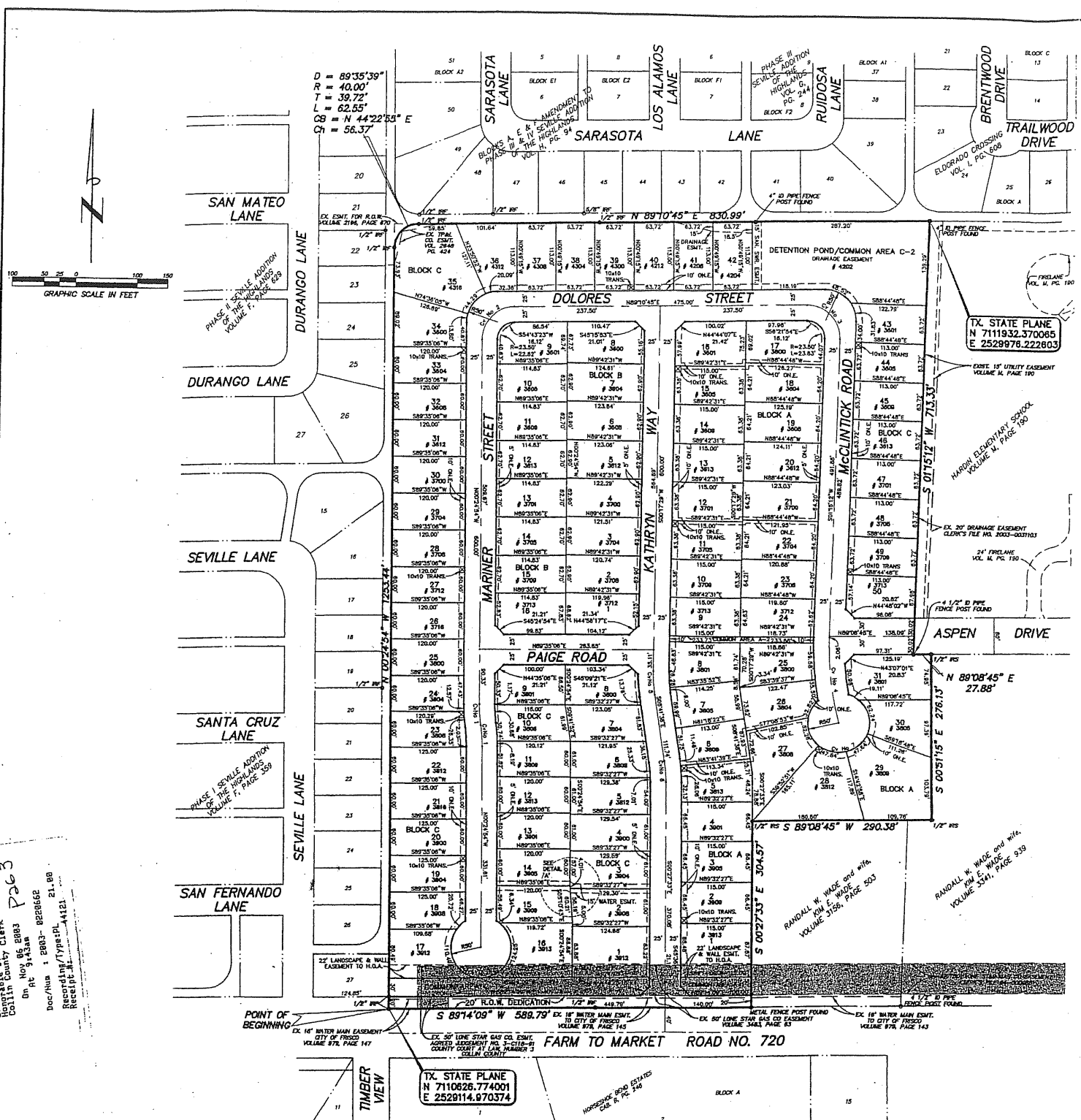
EX. 15" UTILITY EASEMENT VOLUME 4, PAGE 190

EX. 15" UTILITY EASEMENT VOLUME 4, PAGE 190

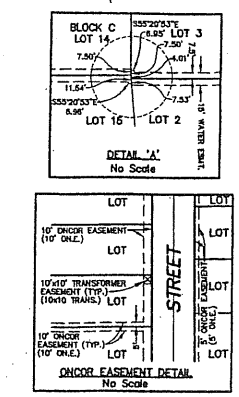
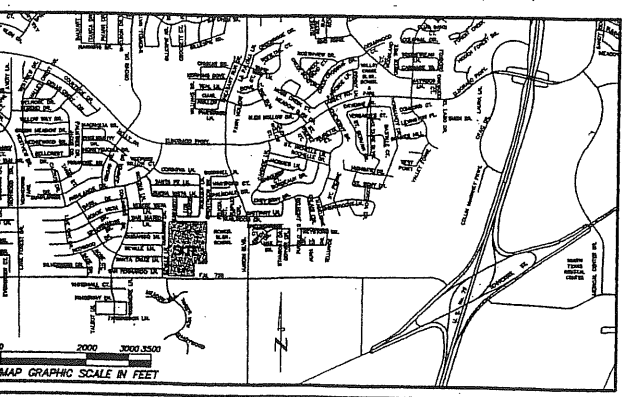
EX. 15" UTILITY EASEMENT VOLUME 4, PAGE 190

EX. 15" UTILITY EASEMENT VOLUME 4, PAGE 190

EX. 15" UTILITY EASEMENT VOLUME 4, PAGE 190



FILED FOR RECORD BY
 Collette Brinkley
 Collin County Clerk
 On Nov 05 2003 2:26:33
 Doc/Plan: 1 2883- 222662
 Record/Instrument: 21-88
 Record/Instrument: 44121



ALL COMMON AREAS ARE TO BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION
 Note: H.O.A. denotes - Homeowner's Association

CURVE DATA									
CV No	Interior	Centerline	Exterior	Δ	Δ	Δ	Δ	Δ	Δ
1	879.35	879.35	879.35	17.59	17.59	17.59	17.59	17.59	17.59
2	28.50	28.50	28.50	16.20	16.20	16.20	16.20	16.20	16.20
3	28.50	28.50	28.50	16.20	16.20	16.20	16.20	16.20	16.20
4	475.00	475.00	475.00	32.72	32.72	32.72	32.72	32.72	32.72
5	225.00	225.00	225.00	18.84	18.84	18.84	18.84	18.84	18.84
6	225.00	225.00	225.00	18.84	18.84	18.84	18.84	18.84	18.84
7	225.00	225.00	225.00	18.84	18.84	18.84	18.84	18.84	18.84
8	225.00	225.00	225.00	18.84	18.84	18.84	18.84	18.84	18.84

OWNER'S CERTIFICATE

STATE OF TEXAS
 COUNTY OF COLLIN

WHEREAS, Centex Homes, a Nevada general partnership is the owner of a tract of land situated in the G. Williams Survey, Abstract No. 976, Collin County, Texas, and being a portion of that certain tract of land conveyed to David Wayne Brinson, Trustee according to deed recorded at Clerk's File Number 94-001833, Deed Records of Collin County, Texas, and all that certain tract of land conveyed to William W. Elliott and wife, Mae Jean Elliott according to deed recorded in Volume 956, Page 506, Deed Records of Collin County, Texas, and a portion of that certain tract of land conveyed to Randall W. Wade and wife, Kim E. Wade according to deed recorded in Volume 3156, Page 503, Deed Records of Collin County, Texas, and a portion of that certain tract of land conveyed to Randall W. Wade and wife, Kim E. Wade according to deed recorded in Volume 3341, Page 939, Deed Records of Collin County, Texas, and being more particularly described as follows:

Beginning at a 1/2" iron rod found for the southwest corner of the herein described tract, said iron rod being the southwest corner of said Brinson tract and being in the north right of way line of Farm to Market Road 720 (a variable width right of way);

THENCE N 00°24'54" W, with the east line of the alley rights of way of Phase I, Seville Addition of the Highlands, as recorded in Volume F, Page 359, Plat Records of Collin County, Texas, and Phase II, Seville Addition of the Highlands as recorded in Volume F, Page 629, Plat Records of Collin County, Texas, a distance of 1253.44 feet to a 1/2" iron rod found for corner, said iron rod being the south corner of an Easement for Right of Way recorded in Volume 2196, Page 670, Deed Records of Collin County, Texas;

THENCE along a curve to the right and with said Easement for Right of Way on an arc length of 62.55 feet to a 1/2" iron rod found for corner in the south alley right of way line of Phase III, Seville Addition of the Highlands as recorded in Volume G, Page 244, Plat Records of Collin County, Texas, said curve having a central angle of 89°35'39", a radius of 40.00 feet, a tangent length of 39.72 feet, a chord bearing of N 44°22'55" E and a chord length of 56.37 feet;

THENCE N 89°10'45" E, 830.99 feet with the south line of said alley right of way to a 4" fence post found for the northwest corner of Hardin Elementary School as recorded in Volume M, Page 190, Plat Records of Collin County, Texas;

THENCE S 01°15'12" W, 713.33 feet with the west line of said Hardin Elementary School to a 4 1/2" fence post found for the southwest corner of said Hardin Elementary School plat and being the southwest corner of the dedicated right of way line of Aspen Drive (60' ROW);

THENCE N 89°08'45" E, 27.88 feet with said south right of way line to a 1/2" iron rod with NDM plastic cap set for corner;

THENCE S 00°51'15" E, 276.13 feet to a 1/2" iron rod with NDM plastic cap set for corner in the east line of said Elliott tract;

THENCE S 89°08'45" W, 290.38 feet to a 1/2" iron rod with NDM plastic cap set for corner in the east line of said Elliott tract;

THENCE S 00°27'33" E, 304.57 feet with the east line of said Elliott tract to a metal fence post found for corner in the north right of way line of said Farm to Market Road 720;

THENCE S 89°14'09" W, 589.79 feet with the north right of way line of said Farm to Market Road 720 to the Point of Beginning and containing 23.764 acres (1,035,172 square feet) of land, more or less.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, Centex Homes, a Nevada general partnership acting herein by and through its duly authorized officers, does hereby adopt this plat designating the hereinabove described property as Franklin Heights in addition to the City of McKinney, and does hereby dedicate to the public use forever, the streets and alleys shown thereon. The streets and alleys are dedicated for street and alley purposes. All public improvements and dedications shall be free and clear of all debt, liens, and/or incumbrances. The easements and public use areas, as shown, are dedicated, for the public use forever, for the purposes indicated on this plat. No buildings, fences, trees, shrubs, or other improvements or growths shall be constructed or placed upon, over or across the easements as shown, except that landscape improvements may be placed in Landscape Easements, if approved by the City of McKinney. In addition, Utility Easements may also be used for the mutual use and accommodation of all public utilities desiring to use or using the same unless the easement limits the use to particular utilities, said use by public utilities being subordinate to the Public's and City of McKinney's use thereof. The City of McKinney and public utility entities shall have the right to remove and keep removed all or parts of any buildings, fences, trees, shrubs or other improvements or growths which may in any way endanger or interfere with the construction, maintenance, or efficiency of their respective systems in said Easements. The City of McKinney and public utilities shall at all times have the full right of ingress and egress to or from their respective easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, reading meters, and adding to or removing all or part of their respective systems without the necessity at any time procuring permission from anyone.

This plat approved subject to all platting ordinances, rules, regulations and resolutions of the City of McKinney, Texas.

WITNESS, my hand, this the 12th day of September, 2003.

CENTEX HOMES, a Nevada general partnership
 By: Centex Real Estate Corporation, a Nevada corporation
 Its: managing general partner
 By: Robert J. Romo
 Its: Vice President - Land Acquisition and Development - DFW Region

STATE OF TEXAS
 COUNTY OF DALLAS

This instrument was acknowledged before me on September 12th 2003, by Robert J. Romo as Vice President - Land Acquisition and Development (DFW Region) of Centex Real Estate Corporation, a Nevada corporation, on behalf of said corporation, and the corporation executed this instrument as partner on behalf of Centex Homes, a Nevada general partnership.

Mindy Beth Reiche
 Notary Public in and for the State of Texas
 My Commission Expires: August 21, 2004

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

THAT I, John L. Melton, do hereby declare that I prepared this plat and the field notes made a part thereof from an actual and accurate survey of the land, and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision Regulations of the City of McKinney, Texas.

John L. Melton
 Texas RPLS No. 4268

STATE OF TEXAS
 COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared John L. Melton, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he each executed the same for the purpose and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of September, 2003.

Notary Public in and for the State of Texas
 My Commission Expires: August 23, 2006

"Approved and Accepted"

Bill Whitfield
 Mayor
 City of McKinney, Texas
 9-23-03
 Date

NOTICE: Selling a portion of this addition by metes and bounds is a violation of City ordinance and state law and is subject to fines and withholding of utilities and building permits.

23.764 ACRE TRACT
 97 RESIDENTIAL LOTS
 31 LOTS IN BLOCK A WITH TWO COMMON AREAS, A-1 & A-2
 16 LOTS IN BLOCK B
 50 LOTS IN BLOCK C WITH TWO COMMON AREAS, C-1 & C-2
 ALL LOTS COMPLY WITH RS 72 ZONING DISTRICT REQUIREMENTS.
 ALL LOTS COMPLY WITH THE MINIMUM SIZE REQUIREMENTS AS REQUIRED BY THE ZONING DISTRICT.

LANDSCAPE AND WALL EASEMENTS DEDICATED BY THIS PLAT ARE HEREBY DEDICATED TO THE HOMEOWNER'S ASSOCIATION AND ARE TO BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION.

THERE SHALL BE NO VEHICULAR ACCESS FROM THE SUBJECT PROPERTY TO THE ALLEYS ON THE NORTH OR WEST SIDE OF THE SUBJECT TRACT.

RECORD PLAT
 FRANKLIN HEIGHTS
 PART OF THE
 GRAFTON WILLIAMS SURVEY, ABSTRACT NO. 976
 AN ADDITION TO
 THE CITY OF MCKINNEY
 COLLIN COUNTY, TEXAS

DATE: NOVEMBER 12, 2002
 SCALE: 1"=100'

SURVEYOR:
 NATHAN D. WAIER CONSULTING ENGINEERS, INC.
 TWO NORTHPARK
 8080 PARK LANE, SUITE 800
 DALLAS, TEXAS 75231

OWNER/DEVELOPER:
 CENTEX HOMES
 A NEVADA GENERAL PARTNERSHIP
 2800 SURVEYOR BLVD., BLDG. 1
 CARROLLTON, TEXAS 75006

CONTACT:
 PH. (214) 739-4741

CONTACT:
 PH. (972) 417-3582

NOTICES OF FILING “DEDICATORY INSTRUMENTS”

NOTICE OF FILING OF DEDICATORY INSTRUMENTS
FOR
FRANKLIN HEIGHTS

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS:

THIS NOTICE OF FILING OF DEDICATORY INSTRUMENTS FOR FRANKLIN HEIGHTS (this "Notice") is made this 23rd day of August, 2005, by Franklin Heights Homeowners' Association (the "Association"). *September*

WITNESSETH:

WHEREAS, Centex Homes prepared and recorded an instrument entitled "Declaration of Covenants, Conditions and Restrictions for Franklin Heights" on February 25, 2004, as Instrument No. 2004-0025677 of the Deed Records of Collin County, Texas (the "Declaration"); and

WHEREAS, the Association is the property owners' association created by the Declarant to manage or regulate the planned development covered by the Declaration, which development is more particularly described in the Declaration; and

WHEREAS, Section 202.006 of the Texas Property Code provides that a property owners' association must file each dedicatory instrument governing the association that has not been previously recorded in the real property records of the county in which the planned development is located; and

WHEREAS, the Association desires to record the attached dedicatory instrument in the real property records of Collin County, Texas, pursuant to and in accordance with Section 202.006 of the Texas Property Code.

NOW, THEREFORE, the dedicatory instrument attached hereto as Exhibit "A" is a true and correct copy of the original and is hereby filed of record in the real property records of Collin County, Texas, in accordance with the requirements of Section 202.006 of the Texas Property Code.

IN WITNESS WHEREOF, the Association has caused this Notice to be executed by its duly authorized agent as of the date first above written.

FRANKLIN HEIGHTS HOMEOWNERS' ASSOCIATION, a Texas non-profit corporation

By: DeLise Darallo
Its: President

FRANKLIN HEIGHTS HOMEOWNERS' ASSOCIATION
COVENANT ENFORCEMENT AND FINING POLICY

WHEREAS, Article V, Section 5.10 of the Declaration of Covenants, Conditions and Restrictions for Franklin Heights, as amended from time to time (the "Declaration"), and the Bylaws of Franklin Heights Homeowners' Association, provide for the enforcement of the restrictive covenants as contained in the Declaration, the Bylaws of the Association, rules, guidelines and other standards (hereinafter collectively referred to as the "Governing Documents"), as well as for the imposition of fines relating to violations of the Governing Documents; and

WHEREAS, the Board of Directors of Franklin Heights Homeowners' Association (the "Association") finds there is a need to establish orderly procedures for the enforcement of the restrictive covenants set forth in the Governing Documents and for the levying of fines against violating owners.

NOW, THEREFORE, IT IS RESOLVED that the following procedures and practices are established for the enforcement of the Governing Documents and for the elimination of violations of the Governing Documents found to exist in, on and about the Lots within Franklin Heights and the same are to be known as the "Covenant Enforcement and Fining Policy" (to be referred to herein as the "Enforcement Policy").

1. Establishment of Violation. Any condition, use, activity or improvement which does not comply with the provisions of the Governing Documents shall constitute a "Violation" under this Policy for all purposes.

2. Report of Violation. The existence of a Violation will be verified by a field observation conducted by the Board or its delegate. For the purpose of this Enforcement Policy, the delegate of the Board may include Management, an officer or member of the Board, or a member of any committee established by the Board for this purpose. A timely written report shall be prepared by the field observer for each Violation which will include the following information:

- a. Identification of the nature and description of the Violation(s).
- b. Identification by street address or legal description of the Lot on which the Violation exists.
- c. Date of the verification observation and name of the person making such observation.

At the same time that the field observation report is prepared, the Board or its delegate may, but is not obligated to, forward to the Owner of the Lot in question written notice via



**COVENANT ENFORCEMENT
AND / OR
FINING POLICY**

FRANKLIN HEIGHTS HOMEOWNERS' ASSOCIATION
COVENANT ENFORCEMENT AND FINING POLICY

WHEREAS, Article V, Section 5.10 of the Declaration of Covenants, Conditions and Restrictions for Franklin Heights, as amended from time to time (the "Declaration"), and the Bylaws of Franklin Heights Homeowners' Association, provide for the enforcement of the restrictive covenants as contained in the Declaration, the Bylaws of the Association, rules, guidelines and other standards (hereinafter collectively referred to as the "Governing Documents"), as well as for the imposition of fines relating to violations of the Governing Documents; and

WHEREAS, the Board of Directors of Franklin Heights Homeowners' Association (the "Association") finds there is a need to establish orderly procedures for the enforcement of the restrictive covenants set forth in the Governing Documents and for the levying of fines against violating owners.

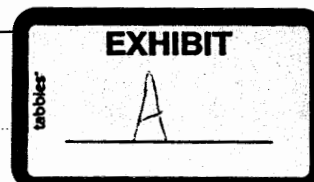
NOW, THEREFORE, IT IS RESOLVED that the following procedures and practices are established for the enforcement of the Governing Documents and for the elimination of violations of the Governing Documents found to exist in, on and about the Lots within Franklin Heights and the same are to be known as the "Covenant Enforcement and Fining Policy" (to be referred to herein as the "Enforcement Policy").

1. **Establishment of Violation.** Any condition, use, activity or improvement which does not comply with the provisions of the Governing Documents shall constitute a "Violation" under this Policy for all purposes.

2. **Report of Violation.** The existence of a Violation will be verified by a field observation conducted by the Board or its delegate. For the purpose of this Enforcement Policy, the delegate of the Board may include Management, an officer or member of the Board, or a member of any committee established by the Board for this purpose. A timely written report shall be prepared by the field observer for each Violation which will include the following information:

- a. Identification of the nature and description of the Violation(s).
- b. Identification by street address or legal description of the Lot on which the Violation exists.
- c. Date of the verification observation and name of the person making such observation.

At the same time that the field observation report is prepared, the Board or its delegate may, but is not obligated to, forward to the Owner of the Lot in question written notice via



regular first-class mail or via postcard of the discovery of a Violation(s) (the "Courtesy Notice"). The Owner will have at least ten (10) days from the date of the Courtesy Notice to correct or eliminate the Violation(s). The Board or its delegate may, in lieu of this notice, proceed immediately to the notice set forth in Paragraph 3 below.

3. Notice of Violation. If the Violation is not corrected or eliminated within the time period specified in the Courtesy Notice, or if the Board or its delegate deem it appropriate to proceed without the Courtesy Notice, the Association will forward to the Owner of the Lot in question written notice of the Violation(s) by regular first-class mail or personal delivery and by certified mail, return receipt requested (the "Notice of Violation"). A Notice of Violation is not required if the alleged violator received a Notice of Violation relating to a similar Violation within six (6) months of the current Violation and was given a reasonable opportunity to cure the prior Violation. In such event, the Board may impose sanctions as authorized by the Declaration and/or this Enforcement Policy without notice to the Owner other than the Final Notice of Violation described in Paragraph 4 below. The Notice of Violation, if required, will state the following:

- a. The nature, description and location of the Violation, including any property damage caused by the Owner.
- b. The authority for establishing the Violation, including the authority for recovering property damages caused by the Owner.
- c. The proposed sanction to be imposed, including, but not limited to, the amount of any fine or the amount claimed to be due from the owner for property damage.
- d. If the Violation is corrected or eliminated within a reasonable time after the Owner's receipt of the Notice of Violation that the sanctions will not be taken or assessed.
- e. The recipient may, on or before thirty (30) days from the receipt of the Notice of Violation, deliver to the Association a written request for a hearing.
- f. If the Violation is not corrected or eliminated within the time period specified in the Notice of Violation, or if a written request for a hearing is not made on or before thirty (30) days from the receipt of the Notice of Violation, that the sanctions or actions delineated in the Notice of Violation may be imposed or taken and that any attorney's fees and costs will be charged to the Owner.
- g. If a hearing is timely requested and is held before a delegate of the Board, that the Owner may appeal the decision of the delegate to the Board.

4. Final Notice of Violation. A formal notice of the Violation and the sanction or action to be imposed or taken, including the amount of any fine or the amount of any property damage (the "Final Notice of Violation") will be sent by the Association to the Owner by regular first-class mail and by certified mail, return receipt requested, where, within the time period

specified in the Notice of Violation, the Violation has not been corrected or eliminated or the Association has not timely received a written request for a hearing.

5. Request for a Hearing. If the Owner timely requests a hearing, the hearing shall be held in executive session of the Board or its delegate affording the alleged violator a reasonable opportunity to be heard. Such hearing shall be held no later than the 30th day after the date the Board receives the Owner's request for a hearing. The notice of the hearing shall be sent no later than the 10th day before the date of the hearing. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The Association or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the Board and the Owner. The Association shall notify the Owner in writing of its action within thirty (30) days after the hearing. The Board may, but shall not be obligated to, suspend any proposed sanction if the Violation is cured within the thirty-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Owner.

6. Appeal. Following a hearing before a delegate of the Board, the Owner shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, president or secretary of the Association within ten (10) days after the date of the Association's written notice to the Owner of the results of the hearing. Any hearing before the Board shall be held in the same manner as provided in Paragraph 5 for hearings before a delegate of the Board.

7. Correction of Violation. Where the Owner corrects or eliminates the Violation(s) prior to the imposition of any sanction, no further action will be taken (except for collection of any monies for which the Lot Owner may become liable under this Enforcement Policy and/or the Declaration). Written notice of correction or elimination of the Violation may be obtained from the Board upon request for such notice by the Owner and upon payment of a fee for same, the amount of which is set by the Board.

8. Corrective Action. Notwithstanding any other provision contained herein to the contrary, where a Violation is determined or deemed determined to exist, the Board may undertake to cause the Violation to be corrected, removed or otherwise abated if the Board, in its reasonable judgment, determines the Violation may be readily corrected, removed or abated without undue expense and without breach of the peace. Where the Board decides to initiate any such action, the following will apply:

a. The Board must give the Owner and any third party that is known to the Association to be directly affected by the proposed action prior written notice of undertaking of the action.

b. Costs incurred by the Association in correcting or eliminating the Violation become the obligation of the Owner and specifically become a specific assessment pursuant to Sections 5.10(f) and (h) and 4.9 of the Declaration.

c. The Association, and its agents and contractors, will not be liable to the Owner or any third party for trespass or any damages or costs alleged to arise by virtue of action taken under this Paragraph 8.

9. Referral to Legal Counsel. Where a Violation is determined or deemed determined to exist and where the Board deems it to be in the best interests of the Association to refer the Violation to legal counsel for appropriate action, the Board may do so at any time. Such legal action may include, without limitation, sending demand letters to the violating Owner, filing a notice of violation or non-compliance against the Lot in the real property records and/or seeking injunctive relief against the Owner to correct or otherwise abate the Violation. Attorney's fees and all costs incurred by the Association in enforcing the Declaration and administering this Enforcement Policy shall become the personal obligation of the Owner.

10. Fines and Suspension of Voting Rights and Use of Common Area. Subject to the provisions of this Enforcement Policy and/or the Governing Documents, the imposition of fines will be on the following basis:

a. Fines will be based on an amount that is reasonably related to the nature of the Violation. The Board shall have final discretion in determining the appropriate fine for the Violation in question. The Board may adopt and amend, from time to time, a schedule of fines applicable to Violations within Franklin Heights which may include a progression of fines for repeat offenders.

b. Imposition of fines will be in addition to and not exclusive of any other rights, remedies and recoveries of the Association as created by the Governing Documents or this Enforcement Policy.

c. Fines are imposed against Lots and become the personal obligation of the Owners of such Lots as well as liens against the Lots per Section 5.10(a) and Article IV of the Declaration. Upon presentation of outstanding fines to the Board for action, the same will be levied against the respective Lots and their Owners as a specific assessment under the Declaration. In addition, the Board may suspend an Owner's right to vote or use any recreational facilities within the Common Area for violation of the Governing Documents.

11. Notices. Unless otherwise provided in the Enforcement Policy, all notices required by this Enforcement Policy shall be in writing and shall be deemed to have been duly given if delivered personally and/or if sent by United States Mail, first-class postage prepaid, to the Owner at the address which the Owner has designated in writing and filed with the Secretary of the Association or, if no such address has been designated, to the address of the Lot of the Owner.

a. Where the notice is directed by personal delivery, notice shall be deemed to have been given, sent, delivered or received upon actual receipt by any person accepting delivery thereof at the address of the recipient as set forth in such notice or if no person is there, by leaving the notice taped to the front door of the residence.

b. Where the notice is placed into the care and custody of the United States Postal Service, notice shall be presumed to have been given, sent, delivered or received, as of the third (3rd) calendar day following the date of postmark of such notice bearing postage prepaid and the appropriate name and address as required herein unless otherwise shown by the recipient to have been received at a later date.

c. Where a day required for an action to be taken or a notice to be given, sent, delivered or received, as the case may be, falls on a Saturday, Sunday or United States Postal Service holiday, the required date for the action or notice will be extended to the first day following which is neither a Saturday, Sunday or United States Postal Service holiday.

d. Where the Board has actual knowledge that an enforcement action would directly affect a third party (e.g. a tenant or a neighbor) or involves a Violation by a party other than the Owner, notices required under this Enforcement Policy may be given, if possible, to such third party in addition to the Owner. Notwithstanding any notice sent to a third party, the Owner remains the party responsible for compliance with the requirements of the Declaration. The Board shall accept a response from any such third party only upon the written direction of the Owner of the Lot upon which the Violation exists.

e. Where the interests of an Owner in a Lot have been handled by a representative or agent of such Owner or where an Owner has otherwise acted so as to put the Association on notice that its interest in a Lot has been and are being handled by a representative or agent, any notice or communication from the Association pursuant to this Enforcement Policy will be deemed full and effective for all purposes if given to such representative or agent.

f. Where an Owner transfers record title to a Lot at any time during the pendency of any procedure prescribed by this Enforcement Policy, such Owner shall remain personally liable for all costs and fines under this Enforcement Policy. As soon as practical after receipt by the Association of a notice of a change in the record title to a Lot which is the subject of enforcement proceedings under this Enforcement Policy, the Board may begin enforcement proceedings against the new Owner in accordance with this Enforcement Policy. The new Owner shall be personally liable for all costs and fines under this Enforcement Policy which are the result of the new Owner's failure and/or refusal to correct or eliminate the Violation in the time and manner specified under this Enforcement Policy.

12. Cure of Violation During Enforcement. An Owner may correct or eliminate a Violation at any time during the pendency of any procedure prescribed by this Enforcement Policy. Upon verification by written report to the Board and sent, where appropriate, to the Board that the Violation has been corrected or eliminated, the Violation will be deemed no longer to exist. The Owner will remain liable for all costs and fines under this Enforcement Policy, which costs and fines, if not paid upon demand therefor by Management, will be referred to the Board of Directors of the Association for collection.

13. Definitions. The definitions contained in the Declaration and Bylaws are hereby incorporated herein by reference.

IT IS FURTHER RESOLVED that this Covenant Enforcement and Fining Policy is effective upon adoption hereof, to remain in force and effect until revoked, modified or amended.

This is to certify that the foregoing resolution was adopted by the Board of Directors at a meeting of same on 2/23, 2005, and has not been modified, rescinded or revoked.

DATE: 2/23/05

[Signature]
Secretary

FRESOLAFINING.FRANKLINHEIGHTS

6021 014811

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 (COUNTY OF COLLIN)
(THE STATE OF TEXAS)
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on:

OCT 11 2005

Brenda Taylor



Filed for Record in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

On Oct 11 2005
At 11:09am

Doc/Num : 2005- 0143273
Recording/Type: NO 48.00
Receipt #: 40874