

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FALLS AT FAIRDALE TOWNHOMES**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

THAT THIS DECLARATION is made on the date hereinafter set forth by ATLAS TEXAS CONSTRUCTION AND TRADING, INC., a Texas corporation (hereinafter referred to as "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property situated in Harris County, Texas, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference and shown on the map or plat thereof (the "**Plat**"), recorded under Film Code No. 605296 in the Map Records of Harris County, Texas (the "**Property**"), commonly known or to be known or marketed by Declarant as "**The Falls at Fairdale**"; and

WHEREAS, Declarant has caused the Property to be developed as a planned residential development; and

WHEREAS, it is the intent of Declarant by this Declaration to provide and adopt a general and uniform plan or scheme of covenants, easements, restrictions and conditions designed to govern and control the development, improvement, sales, use and enjoyment of the Property and each portion thereof as a planned unit residential development and to enhance and project the value, desirability and attractiveness of the development for the residential purposes.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby declares, establishes, adopts and reserves the covenants, restrictions, reservations, conditions, easements and liens set forth below (collectively, the "**Restrictions**"), with respect to the Property, including the use, development, improvement, sale and rental of the Property. The Restrictions shall be appurtenant to the Property and shall constitute covenants running with and binding upon the Property and each portion thereof and upon each person having or acquiring any right, title or interest in and to the Property or any part thereof. Each contract, deed or other instrument hereafter executed and delivered covering the Property, or any portion thereof or any interest therein, shall be held to have been executed, delivered and accepted subject to the Restrictions, regardless of whether or not the Restrictions are referred to or incorporated by reference in said contract, deed or other instrument. Each

Owner (hereinafter defined), by virtue of the acceptance or ownership of a Unit (hereinafter defined), assumes and agrees to be bound by the Restrictions as of the time such person becomes an Owner, whether or not such assumption and agreement is set forth in the deed or other title instrument in favor of such Owner.

ARTICLE I

Definitions

Section 1. "Architectural Control Committee" or "Committee" shall have the meaning assigned to it in Article VII.

Section 2. "Association" or "Corporation" shall mean the Falls at Fairdale Homeowners Association, Inc., a Texas non-profit corporation incorporated by Declarant or its representatives under the laws of the State of Texas, its successors and assigns, the Members of which shall be Owners of the Lots.

Section 3. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "Builder" shall mean any person, firm, corporation, partnership, association or other legal entity which begins construction of single-family homes or townhomes for sale to homeowners.

Section 5. "Common Area" shall mean that portion of the Property owned by the Association for the common use and enjoyment of the Members of the Association and shall include, but is not limited to, all trees, landscaping, sprinkler system, drainage improvements, pavements, private streets, pipes, wires, conduits, and other public utilities situated thereon.

Section 6. "Declarant" shall mean and refer to Atlas Texas Construction and Trading Inc., a Texas corporation, its successors and assigns, including, but not limited to, any person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, which acquires all or substantially all of the Lots then owned by Declarant (or its subsequent successors in interest) together with their rights hereunder, by conveyance and assignment from Declarant, or by judicial or nonjudicial foreclosures, for the purpose of development and/or construction and/or marketing of the Units.

Section 7. "Election Date" shall mean the earliest of the dates when (i) Declarant has sold all of its Units; (ii) ten years have lapsed from the date of recordation of these Restrictions; or (iii) Declarant by written notice to the Board notifies the Board of its election to cause the Election Date to occur.

Section 8. "Lienholder" shall mean the holder of a first lien mortgage on any Lot in the development.

Section 9. "Lot" is any parcel of the Property on which a Unit has been built or is planned to be built, as more particularly shown on the Plat recorded under Film Code No. 605296 in the Map Records of Harris County, Texas.

Section 10. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 11. "Owner" shall mean each person or entity who owns record title to a Unit.

Section 12. "Property" shall mean that certain real property situated in Harris County, Texas, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference, as shown on the Plat recorded under Film Code No. 605296 in the Map Records of Harris County, Texas, commonly known or to be known or marketed by Declarant as the "**The Falls at Fairdale**"

Section 13. "Subdivision" shall mean a subdivision of fifteen (15) Lots and Common Area comprising that certain real property situated in Harris County, Texas, more commonly known or to be known or marketed by Declarant as The Falls at Fairdale, inclusive, as shown on the Plat recorded under Film Code No. 605296 in the Map Records of Harris County, Texas.

Section 14. "Unit" shall mean a detached or attached single family residential dwelling constructed on a Lot.

Section 15. "Driveway Easement" shall mean and refer to the area shown within the boundaries of the Property which is designated on the Plat of the Property as a private access easement or shared driveway.

ARTICLE II

Property Rights

Section 1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the express terms of this Declaration and the following provisions:

- (a) The right of the Association to make, publish and enforce reasonable rules and regulations for the use of the Common Area and any facilities situated thereon, including but not limited to the use and maintenance of the Common Area, and the right of the Association to contract for the exclusive services such as water, sanitary sewage, trash collection and landscape maintenance for the Common Areas.
- (b) The right of the Association to suspend the right to use of the facilities owned by the Association, excluding domestic water, by a Member and its tenants, guests,

and invitees for any period during which any Assessment against his Unit remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its adopted rules and regulations.

- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency or authority subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless (i) an instrument of agreement to such dedication or transfer, signed by Members holding two-thirds (2/3) of the votes is properly recorded in the Deed Records of Harris County, Texas and (ii) written notice of proposed action under this provision is sent to every Owner and lienholder not less than ten (10) days, nor more than fifty (50) days in advance of said action.
- (d) The right of Association, in accordance with its Articles and Bylaws, to borrow money for the purpose improving the Common Area and facilities and in aid thereof and to mortgage said property, and the rights of such mortgagee in said property shall be subordinate and inferior to the rights of the Owners hereunder.

Section 2. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Unit. The Owners hereby covenant that any lease executed on a Unit shall be in writing and contain provisions binding any lessee thereunder to the terms of these Restrictions, the Bylaws of the Association, and the rules and regulations applicable to the Property and further providing that noncompliance with the terms of the lease shall be a default thereunder.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, subject to any encumbrances or other matters then of record which do in fact cover or affect the Property or any part thereof. The Common Area shall remain undivided and shall at all times be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area.

ARTICLE III

Membership and Voting Rights

Section 1. Membership. Every person or entity who is an Owner of a Lot, including Declarant and contract sellers, shall be a Member of the Association. The forgoing is not intended to include persons or the entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership per Lot. Ownership of such Lot shall be the sole qualification for membership, and such membership shall automatically terminate when such ownership ceases. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Property, through

judicial or non-judicial foreclosure or by deed in lieu of foreclosure, shall be a Member of the Association.

Section 2. Classes of Voting. The Association shall have two classes of voting membership, as follows:

Class A. Class A Members shall be all Owners and Builders, with the exception of the Class B Member until the Election Date, and shall be entitled to no votes until the Election Date. From and after the Election Date, each Class A Member shall be entitled on one (1) vote for each Unit owned. If there is more than one (1) Owner of the Unit, then such Owners shall designate one of their number as the Member of Association, which designation shall be made in writing to the Board. After an owner is so designated, the Board shall have the right to rely on such designation until a written notice revoking such appointment is received by the Board. Any such Owners may designate the Member from among themselves in any manner they deem fit, and in the event that such Owners are unable to agree upon one of their number to be designated as the Member of the Association, then none of such Owners shall have any votes, fractional or otherwise, in the Association.

Class B. The sole Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Unit owned, provided that the Class B membership shall cease and be converted to Class A membership on the Election Date.

Section 3. Suspension. All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in excess of thirty (30) days in the payment of any Assessment duly established pursuant to Article IV hereof, or is otherwise in default hereunder or under the Bylaws or Rules and Regulations of the Association.

Article IV.

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessment. Each Owner within the Property by acceptance of a deed thereof, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual Assessments or charges; and (2) special Assessments for capital improvements (any and all assessments, annual, special, specific or otherwise, and all other monetary obligations owed by any Member or Owner to the Association as provided herein are referred to as an "Assessment"), such Assessments to be fixed, established, and collected as hereinafter provided, shall be a charge on the applicable Unit and shall be secured by a continuing lien upon such Lot against which each such Assessment is made. Each such Assessment, together with such interest, costs, and reasonable attorney's fees, shall be the joint and several personal obligation of the person(s) who was the Owner of such Unit at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless

expressly assumed by them; however, except as otherwise provided herein, the lien shall remain in full force and effect as to any amounts owing with respect to such Unit or Lot.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the improvement, operation, administration, management, repair and maintenance of the Property, the Common Area and services and facilities relating to the use and enjoyment thereof and the Lots and Units situated thereon, and for the enforcement of these Restrictions. Assessments shall include, but are not limited to, funds to cover actual Association costs for repairing and maintaining the private streets, private utilities, i.e. water lines, sanitary sewer lines, and storm sewer lines, etc., all taxes, insurance, repair, replacement and maintenance of the Common Area as herein authorized or as may from time to time be authorized by the Board, and the cost of other facilities and service activities including, but not limited to, mowing grass, caring for the walkways, grounds, sprinkler system, landscaping, garbage pickup areas, and other charges required by these Restrictions or that the Declarant or Board shall determine to be necessary to meet the primary purpose of the Association, including the establishment and replacement of those elements that must be replaced on a periodic basis, taxes and other charges as specified herein. The judgment of the Declarant or Board in establishing annual Assessments, special Assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum of Annual Assessments.

- (a) Until January 1, 2008, the maximum annual maintenance Assessment for each Lot or Unit shall be TWO THOUSAND ONE HUNDRED AND SIXTY DOLLARS (\$2,160.00) per annum, payable in equal monthly installments.
- (b) From and after January 1, 2008, the maximum annual Assessment may be increased by the Board, effective January 1 of each year, without a vote of the membership, to an amount not to exceed one hundred twenty percent (120%) of the prior year's annual Assessment.
- (c) From and after January 1, 2008, the maximum annual Assessment may be increased above the Assessment established in Section 3(b) above, provided that any such change shall have the assent of Members holding two-thirds (2/3) of the votes at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the Assessments undertaken as an incident of consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- (d) After consideration of current maintenance costs and future needs of the Association, the Board may levy the annual Assessments at an amount not in excess of the maximum permitted in subparagraph (c) above.
- (e) A Builder shall be assessed at a rate equal to fifty percent (50%) of the current Assessment on any Lot/Unit where the foundation construction has begun.

Section 4. Special Assessments for Working Capital Fund, Nonrecurring Maintenance and Capital Improvements. In addition to the annual Assessment authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only, for the purpose of (i) defraying, in whole or in part, the cost of any nonrecurring maintenance; (ii) the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon the Common Area and Driveway Easements, including the necessary fixtures and personal property related thereto; or (iii) enabling the Board to carry out the functions of the Association hereunder, provided that any such Assessment shall have the assent of Members holding two-thirds (2/3) of the votes at a meeting duly called for this purpose.

Section 5. Notice & Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting and such notice shall set forth the purposes of the meeting. At the first such meeting called, the presence of the Members or of proxies entitled to cast fifty-one percent (51%) of the votes of the entire membership shall constitute a quorum. If the required quorum is not present, another meeting may be called from time to time, and not subject to the same notice requirement, and the required quorum shall be fifty-one percent (51%) of the required quorum at the preceding meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Quorum requirements for meetings called for purposes other than taking actions authorized under Sections 3 and 4 hereof shall be governed by the Bylaws of the Association.

Section 6. Uniform Rates of Assessment. Except as provided herein, both annual and special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis (i.e. 1/12th of the annual Assessment on each Lot each month). The Declarant and the Association shall not be subject to payment of annual or special Assessments.

Notwithstanding the provisions of this Section 6 above, the Declarant may loan to the Association the difference, if any, between the Association's actual operating expenses for the Property and the total Assessments due as herein provided until such time as all of the Lots are occupied. Any such loan shall bear interest at a reasonable rate, and be repayable on reasonable terms, all to be determined by the Board.

Section 7. Date of Commencement and Due Date of Annual Assessments. The annual Assessments provided for herein shall commence as to all Units no later than the first day of the month following the conveyance of the first Unit sold. The first annual Assessment shall be prorated according to the number of months remaining in the calendar day. The Board shall fix the amount (30) days in advance of such annual Assessment becoming due, notice of each annual Assessment shall be sent to every Owner subject hereto. Assessments shall be due and payable monthly, in advance, on

the first day of each calendar month during the year for which such Assessment has been assessed, or as otherwise directed by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Unit have been paid as of a specific date.

Section 8. Effective of Nonpayment of Assessment and remedies of the Association. Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within thirty (30) after the due date, the Assessment shall bear interest from the due date until paid at the maximum non-usurious rate of interest per annum or at such lesser rate of interest as fixed by the Board. The Association shall have authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions. The Association shall also be entitled to attorney's fees and other costs of collecting delinquent Assessments. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot. In order to secure payment of the Assessments, each Owner of a Lot, by such party's acceptance of a deed thereto, hereby grants the Association a contractual lien on such Lot, which lien may be foreclosed either through appropriate judicial proceeding by the Association or by public sale without judicial proceedings. Without limitation, each Owner, by virtue of acceptance or ownership of a Unit, irrevocably grants to the Association a power of sale so that the lien securing payment of the unpaid sums required to be paid by this Declaration may be foreclosed at public sale upon compliance with Section 51.002 of the Texas Property Code (or any successor statute), as the same may be amended from time to time. Whenever the Association proceeds with non-judicial foreclosure pursuant to the provisions of Section 51.002 of the Texas Property Code (or any successor statute) and said power of sale, it shall designate in writing a nominee or trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record (either before or following any action by such trustee) in the Official Public Records of Real Property of Harris County, Texas. If the Association has determined non-judicially to foreclose the lien provided herein pursuant to the provisions of Section 51.002 of the Texas Property Code (or any successor statute) and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the notice of trustee's sale no less than twenty-one (21) days before the date on which said sale is scheduled by posting such notice through the United States Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of Association. If required by law, the Association or trustee shall cause a copy of the notice of trustee's sale to be recorded in the Official Public Records of Real Property of Harris County, Texas. Out of the proceeds of such sale, there first shall be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the

Association an amount equal to in default; and third, any remaining balance shall be paid to the person or persons legally entitled thereto. Following any such foreclosure, each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any lawful means, including a judgment for possession, an action of forcible detainer, and the issuance of a writ of restitution thereunder. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing same. Each Owner, by virtue of acceptance of ownership of a Unit, hereby expressly vests in the Association, and its agents, the right and power to bring all actions against the Owner personally in Harris County, Texas, or elsewhere as the Association may elect, for the collection of unpaid Assessments as debt. In addition to the remedy of foreclosure of the lien hereby retained and all other rights and remedies available at law or otherwise, in the event of nonpayment by any Owner of such Owner's Assessment for in excess of thirty (30) days after the due date, the Association may, acting through the Board, pursue any or all of the following remedies:

- (a) The Association may, without prior notice or liability to the nonpaying Owner, publish in appropriate newsletters or other publications, information concerning the nonpaying Owner and the amount and time of delinquency; and
- (b) The Association may, without prior notice or liability to the nonpaying Owner, notify such Owner's lenders, any credit bureau or other credit resources or any title company, or may file an appropriate claim of public record.
- (c) The Association may, without prior notice or liability to the nonpaying Owner, terminate any services including but not limited to water service provided for such Owner and funded from the annual or special Assessments.

Section 9. Subordination of the Lien to Mortgages. The lien securing the Assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages, with the exception of liens created pursuant to Section 50 (a)(6), Article XVI, of the Texas Constitution, granted or created by the Owner of any Unit to secure the payment of monies advanced and used for the purpose of purchasing and/or improving such Lot. Sale or transfer of any Unit shall not affect the Assessment lien. However, the sale and transfer of any Unit pursuant to a foreclosure under such purchase money or improvement mortgages, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien for any such Assessments due prior to such sale or transfer. No sale or transfer shall release such Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The Common Area and all properties dedicated to, and accepted by, a local public authority shall be exempt from the Assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said Assessments.

ARTICLE V.

Management and Operation of Property

Section 1. Non-Profit Corporation. FALLS AT FAIRDALE HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation, has been organized, and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 2. Bylaws. The Association may make whatever rules or bylaws it may choose to govern the organization, provided that same are not in direct conflict with the terms and provisions hereof.

Section 3. Management by Association. The affairs of the Property shall be administrated by the Association. The Association shall have the power to provide for the maintenance, repair, replacement, administration, insuring and operating of the Property pursuant to this Declaration, the Bylaws and the rules and regulations applicable to the Property and to perform such other acts as may be reasonably necessary in the operation of the Property so long as such actions are not inconsistent with the terms of this Declaration. Without limiting the generality of the foregoing, the Association, acting with authorization of the Board, shall be entitled: (a) to enter into such agreements concerning the Property as a viable residential development, including, without limitation, the right to grant utility and other easements with respect to the Property, or portions thereof, for uses the Board shall deem appropriate and the right to enter into agreements for cable television service to the Property; (b) to enter into such agreements with adjoining or nearby land owners, associations and entities representing such landowners or others, with respect to matters of maintenance, trash pick-ups, repair, administration, security, traffic, or other matters of mutual interest; (c) to make rules and regulations relating to parking, flow, on-street parking, traffic and other uses of drives within the Property; (d) to regulate noise within the Property, including, without limitation, the right to require mufflers on engines and to prohibit the use of devices producing excessive noise and (e) to assume such other obligations and/or responsibilities of the operation and maintenance of the Property as the Association, in its sole discretion, shall so decide. The rights, powers and duties of the Association set forth in this Declaration shall be exercised by the Board or its designees. Any and all management agreements entered into by the Association shall be reviewed on an annual basis.

Section 4. Number and Election of Board. The number, term and election of the Board of Directors shall be as determined in the Articles of Incorporation and By-Laws of the Association.

Section 5. Initial Board of Directors; Election of First Board. As of the date of this Declaration, the initial Board shall be composed of Yunus Dogan, Mehmet Tanis and Inci Akpinar. The Declarant may fill vacancies on the Board until the Election Date. Such initial Board shall serve until the first Board is elected by the Members. The election of the first Member-elected Board shall be held in accordance with the Bylaws upon the

Election Date. After the Election Date, the members of the Board shall be elected as set forth in the Bylaws.

Section 6. Meeting of the Board of Directors. The Board shall meet as set forth in the Bylaws.

Section 7. Powers and Duties of the Board. The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association:

- a. To execute all declarations of ownership for tax Assessments purposes with regard to the Common Area on behalf of all Owners.
- b. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.
- c. To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.
- d. To protect or defend the Common Area from loss or damage by suit or otherwise and to provide adequate reserves for replacements.
- e. To enter into contracts for exclusive services such as water, sanitary sewage, and trash collection.
- f. To make reasonable rules and regulations for the operation of the Common Area and to amend them from time to time. The rules and regulations may provide for limitations on use of common recreational areas during certain periods by youthful persons, visitors or otherwise.
- g. To make available for inspection by Owners within ninety (90) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.
- h. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost Property. If insurance proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.
- i. To enforce the provisions of these Restrictions and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.
- j. To delegate the duty to collect Assessments provided for herein and to pay for such service.

Section 8. Board Actions in Good Faith. Neither the Board nor any Member or agent thereof shall be or become liable to the Association, its Members or any other party with respect to any action or inaction made or taken in good faith.

ARTICLE VI.

Utility Bills, Taxes and Insurance

Section 1. Obligation of the Owners. Owners' utility bills, taxes and cable shall be governed by the following:

(a) Each Owner shall pay at his own cost and expense for all electricity, water, gas, telephone service, cable television, Internet service and other utilities used or consumed by him or any Occupant on his Lot.

(b) Each Owner shall directly render for taxation his own Lot and improvements thereon, and shall at his own cost and expense directly pay all taxes levied or assessed against or upon his Lot and the improvements and property thereon.

Section 2. Obligation of the Association. The Association shall have the following responsibilities regarding utility bills, taxes, cable and insurance:

(a) The Association shall pay as a common expense of all Owners, for all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Areas and the improvements thereon and the appurtenances appertaining thereto or to any part thereof.

(b) The Association shall render for taxation and shall pay, as part of the common expenses of all Owners, all taxes levied or assessed against or upon the Common Areas (to the extent that the Association has a fee simple ownership interest) and the improvements thereon and appurtenances appertaining thereto or to any part thereof.

(c) The Association shall have authority to obtain and continue in effect as a common expense of all Owners, a blanket property insurance policy or policies to insure the structures and facilities, if any, located in the Common Areas, and the Association against the risks of loss or damage by fire and other hazards as are covered under standard extended or all-risk coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Common Areas and any improvements thereon, the Association, the Board of Directors, and the agents and employees of the Association, from and against liability in connection with the Common Areas and any improvements thereon. The Board may also obtain directors and officers liability insurance and fidelity insurance and such other coverages as it may consider necessary or desirable as a common expense of the Association.

(d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid out of the Association maintenance fund as a common expense of all Owners and shall be a part of the base monthly Assessment.

Section 1. Fire and Extended Coverage. Each Owner shall upon request be required to furnish annually to the Association, and to the complete satisfaction of the Board, proof to insurance coverage on his Unit by a reputable insurance company acceptable to the Association and licensed to do business in the State of Texas, in an amount equal to the full insurable replacement cost of the Unit as determined annually by the Board, affording protection against loss or damage from fire or other hazards covered by the standard extended coverage policy. The ownership of the Units also includes private ownership of any fence surrounding the Lot. The Owner's insurance shall also provide coverage against damage or destruction of any fence appurtenant to such Unit. Should an Owner fail to provide adequate proof of insurance coverage as herein provided, the Association shall have the authority to purchase such coverage. Premiums for any insurance obtained by the Association on individual Units shall not be a part of the common expenses but shall be a debt owed by the Owner of said Unit and shall become part of the Assessments payable by said Owner and collectible as such as herein provided. Each Owner and the Association agree to and hereby waive all rights or subrogation against the Declarant they may have now or in the future under any property insurance policies.

Section 2. Fire or Casualty; Rebuilding. In the event of a fire or other casualty causing damage or destruction to a Unit, then the Owner of such damaged or destroyed Unit shall thereupon speedily repair or reconstruct the damaged portion of such Unit substantially in accordance with the plans and specifications therefore, or as the Architectural Control Committee may otherwise approve. Such repairs or reconstruction shall be commenced within thirty (30) days after the casualty causing the damage or destruction and shall be pursued diligently until the Unit is repaired or rebuilt in as good a condition as prior to such damage or destruction. In the event such Owner fails or refuses to repair or reconstruct the damaged portion of such Unit as set forth herein, the Association is hereby authorized, but shall have no obligation, to undertake to rebuild or repair the Unit and assess said Owner for the cost of such repair or replacement, plus interest thereon at the maximum non-usurious rate of interest per annum until paid. Such Assessment shall become the personal obligation of said Owner and a lien against such Owner's Unit, and shall be enforceable as if it were an annual Assessment as herein provided. Each Owner shall be responsible for the reconstruction, repair and replacement of all personal and other property in or a part of such Owner's Unit. Each Owner shall be responsible for any costs not otherwise covered by insurance carried by the Association and caused by or resulting from such Owner's negligence or misuse or by the negligence or misuse of his immediate family, invitees or his agents or employees in the course of their duties, and, to the extent not covered by insurance proceeds collected by the Association, each Owner, by virtue of acceptance or ownership of a Unit, indemnifies the Association and all other Owners against any such costs.

In the event of damage or destruction by fire or casualty to any property covered by insurance written in the name of the Association (including insurance on individual Units as provided above), the Board shall, upon receipt of the insurance proceeds contract to rebuild or repair such damaged or destroyed portions of the property as to good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board, or by an agent duly authorized by the Board. The Board may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board shall levy a special Assessment against all Owners of the damaged Units in such proportions as the Board deems fair and equitable in the light of the damage sustained by such Units to make up any deficiency, except that the special Assessment against all Owners of the damaged condition as formerly, the Board shall levy a special Assessment against all Owners of the damaged Units, in such proportions as the Board deems fair and equitable in the light of the damage sustained by such Units to make up any deficiency for repair or rebuilding of the Common Area not a physical part of a Unit. In the event that such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over the respective mortgagees and Owners of the damaged Units in such proportions as the Board deems fair and equitable in the light of the damage sustained by such Units.

Section 3. Mechanical Gate and Perimeter Fence. The Declarant and the Association reserve the right, but are under no obligation, to arrange for the utilization of an unmanned mechanical gate at the entrance to the Property. The Declarant and the Association also reserve the right, but are no under obligation, to have the Property encompassed by a perimeter fence.

NEITHER THE DECLARANT NOR THE ASSOCIATION WARRANT OR GUARANTEE THAT: (A) ANY FENCE AND/OR GATE ARRANGEMENTS WOULD BE SUFFICIENT AND ADEQUATE TO DIMINISH OR ELIMINATE THE COMMISSION OF CRIMES AGAINST PERSONS OR PROPERTY; AND (B) SUCH ACTS WILL NOT BE ATTEMPTED OR ACTUALLY OCCUR WITHIN THE PROPERTY. THESE ARRANGEMENTS WOULD NOT BE DESIGNED OR INTENDED TO REPLACE THE CONVENTIONAL POLICE AND FIRE PROTECTION AND PARAMEDICAL SERVICES AVAILABLE FROM THE CITY OF HOUSTON.

Section 4. Miscellaneous Insurance Issues. The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, board members, officers or authorized representatives of the Association. The Association will not carry any insurance pertaining to, nor does it

assume any liability or responsibility for, the real or personal property of the Owners and Members (and their respective family members and guests).

EACH OWNER AND MEMBER EXPRESSLY ACKNOWLEDGES, COVENANTS AND AGREES WITH THE DECLARANT AND THE ASSOCIATION THAT:

- (a) Neither Declarant nor the Association has any responsibility of any kind or character whatsoever regarding or pertaining to the real or personal property of each Owner and Member;
- (b) Each Owner and Member shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner and Member's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner and Member covering his or her real and personal property;
- (c) Each Owner and Member releases and holds Declarant, the Association and the Board harmless from any liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all utility or infrastructure improvements constructed on the property by Declarant, including without limitation the functioning (whether mis-, pal-, or non-) or maintenance of any mechanical gate access devices, drainage system and improvements, and Driveway Easement within the Property. Such release shall be construed and notice is hereby given that such release includes the release of Declarant, Board and Association for any alleged negligence by act or omission related to the improvements noted above;
- (d) Each Owner and Member will cooperate with Declarant and the Association in connection with the establishment, evolution and maintenance of reasonable controls on the pedestrian and vehicular traffic into and within the Property and abide by any and all rules and regulations of the Association, as adopted and promulgated from time to time, related to the entry upon and use of any Driveway Easement and Common Area within the Property.

ARTICLE VII

Architectural Control

Section 1. Designation of Committee. The Architectural Control Committee shall consist of three (3) members who shall be natural persons appointed by the Board (the "Architectural Control Committee" or "Committee"). Any and all members of such Committee may be removed by the Board without cause. Such Committee shall act by majority vote of the members thereof. The Committee may employ one or more architects, engineers, attorneys, or other consultants to assist the Committee in carrying out its duties hereunder, and the Association shall pay such consultants for such services as they render to the Committee.

Section 2. Function of Architectural Control Committee. No building, fence, wall or other structure or improvement shall be commenced, erected or maintained upon any

Unit, or upon the patio or garage used in connection with any Unit, after the purchase of any Unit from Declarant, its successors or assigns, nor shall any exterior addition to or change and alteration thereof be made until the plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Committee.

Section 3. Content of Plans and Specifications. The plans and specifications to be so submitted and approved shall include the following:

- a. A plot plan showing the location of all improvements, structures, walks, driveways, fences and Unit corners and the corners of proposed improvements. Unit drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the lot contours is contemplated;
- b. Exterior elevations;
- c. Exterior materials, colors, textures and shapes
- d. Structural design;
- e. Landscaping plan, including walkways, fences, and walls, elevation changes, sprinkler systems, vegetation and ground cover;
- f. Parking area and driveway plan;
- g. Any screen including size, location and method;
- h. Any exterior illumination, including location and method;
- i. Fire protection system, if required;
- j. Mailboxes, if any; and
- k. Any additional plans, specifications, or other information reasonably requested by the Committee.

Section 4. Basis of Approval. Approval of plans and specifications shall be based, among other things, on adequacy of site dimensions, structural design, conformity and harmony of external design, materials, and location with neighboring structures and sites, relation of finished grades and elevations to the neighboring sites, quality of workmanship and materials, and conformity to both the specific and general intent of these Restrictions.

Section 5. Architectural Control Guidelines. The Architectural Control Committee shall have the right to develop, adopt and from time to time revise "**Architectural Control Guidelines**" (herein so called) for use in the review and approval of modification, additions, alterations and reconstruction of improvements on Lots. The Architectural Control Committee shall also set standards, review and act upon all proposed modifications of improvements to those Lots where the Units have been constructed and sold and are owned by someone other than the Declarant, its designated successors or assigns. This Architectural Control Committee will also act with respect to any replacement improvements.

The Architectural Control Committee shall promulgate standards and procedures governing its area of responsibility and practice, and may adopt separate standards and procedures governing modifications and alterations on Units. In addition thereto, the

following requirements shall be adhered to: plans and specifications showing the nature, kind, shape, color, size, materials and location of such modifications, additions or alterations, shall be submitted to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures on and off the Lot in question, and as to location in relation to surrounding structures, topography and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel or to paint or otherwise alter the interior of a Unit provided that such remodeling or repainting does not affect the structure of the Unit or the appearance or color of window coverings visible from outside any Unit.

Section 6. Failure of the Committee to Act. The Committee shall approve or disapprove such plans and specifications or reject them as being inadequate within thirty (30) days after receipt thereof. Any such disapproval shall set forth the specific reason or reasons for such disapproval. Any failure by the Committee to approve or disapprove the submitted plans in writing within such thirty (30) day period shall not constitute a waiver of the requirements of this Declaration or constitute the Committee's approval. However, in the event the Committee fails to either (i) approve or disapprove Plans submitted to it, or (ii) request additional information reasonably required, within thirty (30) days after submission, the plans and specifications shall be deemed approved. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Committee may reject them as being inadequate or may approve or disapprove a part of such plans and specifications, conditionally or unconditionally, and reject the balance.

Section 7. General. All Property which is now or may hereafter be subjected to this Declaration is subject to architectural and environmental review as provided in this Declaration prior to any modification, addition, alteration or reconstruction on any Lot. Unit or other improvements (including, without limitation, garages, driveways, sidewalks, drainage facilities, landscaping, fences, walks, fountains, statuary and flagpoles, but excluding interior improvements not readily visible from outside the structure) shall be modified or altered, without the prior written approval of the Architectural Control Committee. This review shall be in accordance with this initial Declaration (as amended) and such standards as may be promulgated by the Board or the Architectural Control Committee (subject to review by the Board), and such review and standards shall or may include, without limitation: general aesthetic character of improvements so as to ensure harmony and compatibility of improvements within the Property; placement, orientation and location of improvements on a Lot in a manner so as to be aesthetically and functionally compatible with improvements on or to be constructed on other Lots in the Property; landscaping species, location, number and arrangement; and appropriateness of permitting any proposed structures or improvements other than the main buildings, garages, driveways and parking areas, such as fountains, flagpoles, statuary, outdoor lighting, or others, the Architectural Control Committee not being obligated under any circumstances to approve any such other improvements if they determine that same would detract from the overall aesthetic quality of the area. Any obligation of Declarant to enforce provisions relating to historic preservation shall become the responsibility of the Association and the Committee created in this Article shall ensure compliance therewith. The Board of Directors shall have the right and power

on behalf of the Association to enforce in courts of competent jurisdiction decisions of the Architectural Control Committee. The Architectural Control Committee is not constrained to set as a minimum standard or guideline for any matter subject to its jurisdiction or review hereunder any minimum legal requirements or standards established by applicable or non-applicable law, ordinance, rule or regulation of any federal, state or local governmental authority or agency covering the same or similar subject matter.

Section 8. Appeal of Decisions of the Architectural Committee. If an Architectural Committee separate from the Board has been designated pursuant to the terms of this Declaration, and an Owner does not agree with the Committee's decision regarding submitted plans and specifications, such Owner shall have the right to appeal the Committee's decision to the Board and the Board will, within forty-five (45) days after submission of the Owner's appeal, which appeal shall be in writing and shall include the Owner's specific basis for appeal, make a final determination of whether to overrule the decision of the Committee regarding the submitted plans. In the event the Board does not affirmatively decide to overrule the Committee in such 45 day time period, the decision of the Committee shall be final.

Section 9. Changes in Approved Plans. The written approval of the Committee shall be secured for any material change or revisions in approved plans in the manner provided in this Article for the approval of plans.

Section 10. Variances. The Committee (or, subsequent to its existence, the Board) may authorize variances from compliance with any other of the architectural provisions of this Declaration and/or the applicable Architectural Control Guidelines, including restrictions upon height, size, placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may, in the Committee's judgment and discretion, require. The Committee's decision on a requested variance shall be final, conclusive and binding. Such variances must be evidenced in writing, must be signed by at least a majority of the Committee (or Board, as applicable), and shall become effective upon their execution. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred so long as the Unit in question complies with the restrictions, limitations and conditions stated in such variance. Variances shall be strictly and narrowly construed, and no granting of a variance shall be construed as being broader or less restrictive than its plain wording. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Architectural Control Guidelines for any purpose except as to the particular provision hereof covered by the variance, and shall only constitute a waiver or variance for the particular Unit for which it is issued and is not transferable. Neither shall the granting of such variance affect in any way the obligation to comply with all governmental laws and regulations.

Upon the recommendation of the Committee, the Board may authorize variances, as stated above, with regard to modifications or alterations within its jurisdiction. Such

Committee's variances must be evidenced by a written instrument signed by a majority of the Board and a majority of the Committee. **UNDER NO CIRCUMSTANCES SHALL THE COMMITTEE OR BOARD EVER BE COMPELLED (BY COURT ORDER OR OTHERWISE) TO GRANT A VARIANCE UNDER THE PROVISIONS OF THIS SECTION 10.**

Section 11. No Liability. Neither Declarant, the Association, Board of Directors, the Architectural Control Committee nor the members thereof or their agents shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of a Unit affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, including specifically, but without limitation, consequences of any delay or any defect in any plans or specifications. Every person who submits plans or specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner agrees, that he will not bring action or suit against Declarant, the Association, the Board of Directors, the Architectural Control Committee, or any of the members thereof to recover any such damages.

Section 12. Rules and Regulations. The Architectural Committee may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions hereof.

ARTICLE VIII.

Exterior Maintenance

Section 1. Owner's Exterior Maintenance. Each Owner shall maintain and repair the exterior portion of such Owner's Lot and Unit in good condition using substantially the same material, paint, stain, color and quality of workmanship as the original construction, unless otherwise approved in writing by the Architectural Control Committee. The exterior portion of a Unit includes, without limitation, exterior building surfaces, roofs, gutters, downspouts, enclosed patio areas, outside doors, glass doors, window or door fixtures, and hardware, and window panes and any walks or driveways located on the Lot upon which such Unit is constructed and any fence surrounding the Unit. Further, each Owner shall be obligated to maintain the grass, shrubs, trees and other landscaping, if any, located on such Owner's Lot and Unit as well as the drainage facilities for such Owner's Lot and Unit, or lying between and adjoining such Owner's Unit and the paved section of the street (i.e.: within the City of Houston right-of-way) and the drainage facilities for such Owner's Lot and Unit whether located on such Owner's Lot and within the Common Area.

Section 2. Owner's Utility Line Maintenance. The Owner shall maintain and keep in repair the following equipment and lines located outside the Unit: air conditioning compressor condenser, including pipes and electrical lines connecting same to the Unit, potable water lines, sanitary sewer line connecting the Unit to the sanitary sewer, electric,

natural gas, and/or telephone services lines located on the Lot but not maintained by the electric, gas and/or telephone companies; provided, however, that any lines, pipes, wires, conduits or systems running through a Unit which serve one or more Units and which are not maintained by any utility company, shall be operated, repaired and maintained by the Association, and shall not be distributed or relocated by an Owner without the written consent and approval of Declarant or the Board. An Owner shall perform any act nor perform any work that will impair the structural soundness or integrity of any Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners.

Section 3. Association's Maintenance. Except when caused by the acts or omissions of an Owner, the Association shall be obligated to maintain the Driveway Easements, drainage facilities, landscaping within the Common Area and all facilities located within the Common Area. Other than as specially set forth in these Restrictions, the Association shall have no duty or obligation to maintain, repair or insure any portion of the Property or otherwise expend funds for the benefit of the Owners of Units.

Section 4. Neglect of Owner. In the event that the necessity of maintenance or repair is caused by a negligent act of the Owner, his family, or guests, invitees, employees or agents, the cost of such maintenance or repair shall be added to and become a part of the Assessment of the offending Owner to which such Unit is subject.

Section 5. Authority of Association. In the event an Owner shall fail to maintain the premises and improvements situated on such Owner's Unit in a manner satisfactorily to the Board, the Association shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Unit and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the Assessments to which such Unit is subject.

Section 6. Acceptance of Improvements. THE ASSOCIATION ACCEPTS THE IMPROVEMENTS TO THE SUBDIVISION FROM THE DECLARANT 'AS IS' AND ACKNOWLEDGES THAT DECLARANT HAS MADE NO REPRESENTATION OR WARRANTY EITHER EXPRESS OR IMPLIED REGARDING THE CONDITION OR USE OF THE PROPERTY OR ITS IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO WATER LINES, NATURAL GAS LINES, STREETS, CURBS, DRAINAGE IMPROVEMENTS, OR ELECTRIC LINES.

ARTICLES IX.

Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units upon the Property and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. If a

wall which is intended as a party wall is situated entirely or partly on one Unit building Lot instead of on the dividing line between Unit building Lots, due to error in construction, such wall shall nevertheless be deemed to be on the dividing line and shall constitute a party wall for the adjoining Unit building Lots for the maintenance, repair and reconstruction of the party walls. The principles of this Article shall also apply to party fences separating adjoining Lots.

Section 2. Sharing of Repair and Maintenance. Cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall equally.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such constructing Owner to call for a larger contribution from the others under any rule regarding liability for negligent or willful acts or omissions.

Section 4. Right to Contribution Runs with Land. The right of contribution referred to under this Article shall be a burden upon and appurtenant to the Property and shall pass to such Lot Owner's successors in title.

Section 5. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all three arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore, the Board shall select an arbitrator for the refusing party or parties.

ARTICLE X.

Use Restrictions

Section 1. Residential Use. Each Lot and Unit shall be used exclusively for single-family residential purposes only for use only as a residence for a single family of individuals related by blood or marriage, or maintaining a common household as husband and wife or life partners, or by co-owners (excluding cooperative-type ownership if being used to avoid the intent of this restriction), and residential related improvements and amenities not intended for occupancy. No building or structure intended for or adapted to business purposes, and no apartment house, lodging house, rooming house, hospital, sanitarium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on any Lot, or on any part thereof. No improvement or structure whatever, other than a private Unit with an attached garage, may be erected, placed or maintained on any Lot. No part of any Lot or Common Area shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other non-residential

purposes, nor (subject to constraints of applicable law) for any commercial use of a residential nature (e.g., as a boarding house, day-care facility, half-way house, nursing home, rehabilitation or therapy facility, church or place of religious assembly, etc.). Notwithstanding the foregoing, however, any occupant of a Unit may engage in a home occupation on a full or part time basis upon the Lot if and only if (A) such business is transacted or conducted (insofar as activity on or within the Lot is concerned) entirely through telephone communication (including facsimile transmissions, computer modems and similar communications equipment), (B) there is no visible manifestation exterior to the Unit structure that would indicate that such home occupation is being conducted in the Unit, and (C) the home occupation usage complies with the following other specific restrictions:

- (i) No employees of the business (other than the permitted occupant(s) conducting the business) shall be permitted on the Lot in connection with the conduct of the business;
- (ii) The business shall not permit customers to visit the Lot in connection with the business being conducted thereon;
- (iii) No inventory of the business (other than samples) shall be stored on the Lot;
- (iv) The home occupation use shall not generate any noise that would be in excess of or materially different in nature from that normally associated with a strictly residential use;
- (v) The home occupation use shall not cause there to be traffic generated on or in the vicinity of the Lot in excess of that normally associated with a strictly residential use;
- (vi) There shall be no assembly, fabrication or manufacturing process carried out on the Lot in connection with such home occupation;
- (vii) There shall be no shipping of goods, parts, products, equipment, inventory or materials to or from the Lot in connection with such home occupation; and
- (viii) There shall be absolutely no signage or advertisement of the home occupation business located on the Lot, whether permanent or temporary in nature.

All buildings or structures erected upon said Property, except for the Common Areas shall be of on-site construction and no buildings or structures shall be moved from other locations onto said Property and no subsequent buildings or structures other than Units shall be constructed. No structures of a temporary character, including trailers, motor

vehicles, tents, shacks, or other out-buildings may be used on any portion of said Property at any time as a residence, either temporarily or permanently.

Section 2. Freehold Estate. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

Section 3. Use by Declarant. Notwithstanding any provisions herein contained to contrary, it shall be expressly permissible for Declarant or the builder of the said Units to maintain, during the period of construction and sale of said Units, upon such portion of the Property as Declarant deems necessary, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of said Units, including, but without limitation, a business office, storage area, construction yards, model units and sales office.

Section 4. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of said Units, except that a total of two (2) dogs, cats or other common household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.

Section 5. Signs. No advertising signs (except not more than one (1) five square foot 'for rent' or 'for sale' signs per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or any resident thereof. Declarant, however, shall have the sole right to place identifying signs of any size at each entrance to the Property. The Board reserves the right to approve the design and wording of all signs, and reserves the right to enter in and upon any Unit for the purpose of removing any sign being maintained thereon which has not been approved and shall not be liable to any person or persons for any damages of whatever nature in doing so in a reasonable manner. No business activities of any kind whatsoever, whether part time or full time, shall be conducted in any Unit or in any portion of said Property; provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboards, or the construction and sale period, or of the Association as incorporated or to be incorporated under the laws of the State of Texas, its successors and assigns, in furtherance of its powers and purposes as herein set forth, and further provided that an Owner may use his Unit for professional or other home occupations so long as there is no external evidence thereof (such as consultation person with clients or customers at the Unit).

Section 6. Garbage. All rubbish, trash, and garbage shall be kept in clean and sanitary containers within the areas designated by the Association for collection purposes. Other than on the day of trash pick-up, no trash cans or garbage cans shall at any time be permitted to remain on the street or where same can be seen from the street. No Unit shall be used or maintained as a dumping ground for trash.

Section 7. Landscaping. No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said Property except such as are installed in

accordance with the initial construction of the building located thereon or as approved by the Architectural Control Committee. Except for the right of ingress and egress, the Owners of the Units are hereby prohibited and restricted from using any of said Property outside their respective Units, except as herein provided or as may be allowed by the Board. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of Units in the Property and is necessary for the protection of said Owners.

Section 8. Antennas. Without prior written approval of the Board, no exterior television or radio antennas or satellite dishes more than one meter in diameter shall be placed, allowed or maintained upon any portion of the Property, other than an aerial for a master antenna system for the Property, should any such master system or systems be utilized by the Association and require any such exterior antenna. The Association and/or the Committee shall have the right to designate the location of all satellite antenna or dishes.

Section 9. Storage of Vehicles. No outdoor parking space on the Property shall, without written permission of the Association, be used for storage of campers, boats, trailers, unused or inoperable automobiles or any other items which the Association deems unsightly or inappropriate, and all outdoor parking spaces shall be used by Owners subject to the rules and regulations of the Association.

Section 10. Nuisance. No noxious or offensive activity shall be carried on upon any Unit or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners. No repair work, dismantling or assembling of motor vehicles or any other machinery or equipment shall be permitted in any street, driveway or yard adjacent to a street, or in the Common Area.

Section 11. No Further Subdivision. No Lot shall be further subdivided and separated into smaller Lots, and no portion less than all of any Unit shall be transferred or conveyed.

Section 12. Leasing. Units may be leased solely for residential purposes and only for periods in excess of thirty (30) days. Every lease shall provide that the tenant shall be bound by and subject to this Declaration. The Owner making such lease shall not be relieved from any of such obligations.

ARTICLE XI

Easements

Section 1. Minor Encroachments. Each Unit and the Property included in the Common Area shall be subject to an easement for minor encroachments created by construction, settling, overhangs, brick ledges, balconies, fences, air conditioning equipment, or other protrusions designed or constructed by Declarant and for the maintenance (if any) of same, so long as it stands, and shall and does exist. In the event any Unit is partially or totally destroyed and then rebuilt, the Owners agree that minor encroachments onto parts

of the Unit Lots adjacent to the Unit so affected or Common Areas due to construction or repairs shall be permitted and that a valid easement for such encroachment and the maintenance thereof shall exist.

Section 2. Blanket Easement. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, examination, replacing, repairing, providing and maintaining all utilities servicing the Property, including but not limited to water, sewer, gas, telephone and electrical, a master/cable television antenna system and HVAC units. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on said Property and to affix and maintain electrical, cable and/or telephone wires, circuits, meters, and conduits on, above, across and under the roofs and exterior walls of said Units. An easement is, in addition, specifically granted to the United States Post Office Services, its agents and employees to enter upon the Common Area and Lots in the performance of mail delivery or any other United States Post Office services. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the Common Area and Units in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or to cross over the Common Area and/or any Unit to perform the duties of maintenance and repair of the Unit or drainage improvements, Driveway Easement or Common Area provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially planned, programmed and approved by the Declarant owning the portion of said Property affected by said utility installation or location unless thereafter approved by said Declarant or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Board shall have the right to grant such easement on the portion of the Property owned by it without conflicting with the terms hereof. The easements provided for in this Article XI shall in no way affect any other recorded easement on said premises.

Section 3. Electrical Service. An above ground electric distribution system will be installed in the Property, which service area embraces all of the Units. This electrical distribution system shall consist of overhead primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make electrical service available. In the event that there are constructed within the Property structures containing multiple dwelling units such as duplexes, then the service area embraces all of the dwelling units involved. The Owner of each Unit shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the service cable and appurtenances from the point of electrical company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Unit. The electric company furnishing service shall make the

necessary connections at said point of attachment and at the meter. Declarant has either by designation on the plat of the Property or by separate instrument or within this Declaration granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various Owners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various Owner's owned, and installed service wires. In addition, the Owner of each Unit containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. The electric service to each dwelling unit shall be uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current. Easements for the electric service may be crossed by driveways, walkways, and patio areas, provided the Declarant or builder makes prior arrangements with the utility company furnishing such service. Such easements for the electrical service shall be kept clear of all buildings and neither Declarant nor the utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants to shrubbery, trees, flowers, driveways, walkways or other improvements of the Owner located on the Property covered by said easements. The Owner will repair damage to driveways and walkways caused by the utility company in connection with its use of the easement.

Section 4. Water Service. A water service and distribution system will be installed in the Property, which service area embraces all of the Units. This water distribution system shall consist of master meters and water lines, and such other appurtenances as shall be necessary to make water service available. In the event that there are constructed within the Property structures containing multiple dwellings units such as duplexes, then the service area embraces all of the dwelling units involved. The Owner of each unit shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities) the water service lines and appurtenances from the structure to Lot boundary of each Unit. The Declarant and/or Association shall have the right but no obligation to install submeters for each individual unit and establish individual billing based on usage. The City of Houston-Water Department's (Water Department) furnishing service shall make the necessary connections at said point of attachment to the meter on the Property. Declarant has either by designation on the plat of the Property or by separate instrument or within this Declaration granted necessary easements providing for access to the area occupied by and centered on the water service lines of the various Owner's owned, and installed service lines. Easements for the water service may be crossed by driveways, walkways, and patio areas, provided the Declarant or builder makes prior arrangements with the Water Department furnishing such service. Such easements for the water service shall be kept clear of all buildings and neither Declarant nor the Water Department using the easement shall be liable for any damage done by either of them or their assigns, their agents, employees or servants to shrubbery, trees, flowers, driveways, walkways or other improvements of the Owner located on the Property covered by said easements. The Owner will repair damage to driveways and walkways caused by the Water Department in connection with its use of the easement.

Section 5. Entrance Gate Easement. Declarant or the Association shall have the right, but no obligation, at its sole option to construct an access gate or facility for monitoring entry into the Property, in which event the Association shall maintain such access gate or facility. Accordingly, there is hereby created in favor of the Declarant and the Association, an easement upon, across, over and under the Lots, Common Area and Driveway Easement for ingress and egress, installation, construction, replacing, repairing and maintaining such access gate or facility.

Section 6. Drainage Easement. A drainage system will be constructed upon the Property to provide drainage for the units. No drainage facilities shall be installed or relocated on the Property except as initially constructed by Declarant unless approved by the Declarant or the Board. There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, examination, replacing, repairing, providing, and maintaining such drainage system and the storm sewer facilities.

ARTICLE XII.

General Provisions

Section 1. Non-Liability of Association and Declarant for Security. Without limitation of any other provision of this Declaration, each Owner and Member and their Occupants, family, guests and invitees, covenant and agree with respect to any and all (1) devices or services intended to or which may have the effect of limiting or controlling access to any Common Areas and/or to the Property; and (2) patrol services, video cameras or other monitoring activities within the Property (items (1) and (2) are hereinafter collectively referred to as "Access Control Facilities") provided directly or indirectly by the Association as follows:

(a) Security is the sole responsibility of local law enforcement agencies and individual Owners and Members, their Occupants, and their respective guests and invitees. IT IS ACKNOWLEDGED THAT THE ASSOCIATION HAS NO OBLIGATION WHATSOEVER TO PROVIDE SECURITY. The provision of any Access Control Facilities at any time shall in no way prevent the Board from thereafter electing to discontinue or temporarily or permanently remove such Access Control Facilities or any part thereof.

(b) Any third party providers of any security services (including those providing maintenance and repair of Access Control Facilities) shall be independent contractors, the acts or omissions of which shall not be imputed to the Association or its officers, directors, committee members, agents or employees.

(c) Providing of any Access Control Facilities shall never be construed as an undertaking by the Association to provide personal security or as a guarantee or warranty that the presence of any Access Control Facilities will in

any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause.

(d) EACH OWNER, BY HIS ACCEPTANCE OF A DEED TO A LOT, SHALL BE DEEMED TO WAIVE, ON BEHALF OF SUCH OWNER AND SUCH OWNER'S OCCUPANTS, AND THEIR RESPECTIVE FAMILY MEMBERS, GUESTS AND INVITEES, ANY AND ALL CLAIMS, NOW OR HEREAFTER ARISING AGAINST THE DECLARANT AND THE ASSOCIATION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS AND EMPLOYEES ARISING OUT OF OR RELATING TO ANY INJURIES, LOSS OR DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION ANY INJURY OR DAMAGES CAUSED BY THEFT, BURGLARY, TRESPASS, ASSAULT, VANDALISM OR ANY OTHER CRIME, TO ANY PERSON OR PROPERTY ARISING, DIRECTLY OR INDIRECTLY, FROM THE PROVIDING OR FAILURE TO PROVIDE ANY ACCESS CONTROL FACILITIES, OR THE DISCONTINUATION, DISRUPTION, DEFECT, MALFUNCTION, OPERATION, REPAIR, REPLACEMENT OR USE OF ANY ACCESS CONTROL FACILITIES, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE DECLARANT OR THE ASSOCIATION OR THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS, CONTRACTORS OR EMPLOYEES.

(e) TO THE EXTENT THE RELEASE IN THIS SECTION IS NOT DEEMED EFFECTIVE AS TO ANY OCCUPANT, OR ANY FAMILY MEMBER, GUEST OR INVITEE OF AN OWNER OR OCCUPANT OF A LOT, THE OWNER OF EACH LOT HEREBY INDEMNIFIES AND AGREES TO DEFEND AND HOLD HARMLESS THE DECLARANT AND THE ASSOCIATION, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, SUITS, JUDGMENTS, DAMAGES, COSTS AND EXPENSES (INCLUDING ATTORNEY FEES AND COURT COSTS) ARISING FROM BODILY INJURY (INCLUDING, WITHOUT LIMITATION, MENTAL ANGUISH, EMOTIONAL DISTRESS AND DEATH) AND/OR LOSS OR DAMAGE TO PROPERTY SUFFERED OR INCURRED BY ANY SUCH OCCUPANT OF SUCH LOT, OR ANY FAMILY MEMBER, GUEST OR INVITEE OF THE OWNER OR OCCUPANT OF SUCH LOT, AS A RESULT OF CRIMINAL ACTIVITY WITHIN OR IN THE VICINITY OF THE PROPERTY, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE DECLARANT, THE ASSOCIATION OR THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS, CONTRACTORS OR EMPLOYEES.

(f) Any obligation or liability of the Association which is borne by the Association because of an Owner not abiding by such waiver, release and indemnity obligations under this Section shall be assessed by the Association against the Lot of the Owner who failed to perform such obligation giving rise to such liability, as a Special Assessment against such Lot and its Owner. Nothing herein shall make any Owner of a Lot liable to the Association or any other Lot Owner for any bodily injury (defined above) and/or loss or damage to property of the Occupant, family member, guest or invitee of any other Lot Owner.

Section 2. Indemnification and Hold Harmless.

(a) **By the Association.** The Association shall indemnify every officer, director and member of a duly appointed committee, including the members of the Architectural Control Committee, against any and all expenses, including fees of legal counsel, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reasons of being or having been an officer, director or member of a committee. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors or committee members may also be members of the Association), and the Association shall indemnify, defend and forever hold each such officer, director and committee member free and harmless from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member may be entitled. The Association may, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

(b) **By an Owner.** Each Owner shall be liable to the Association for any damage to the Common Areas or to any equipment thereon which may be sustained by reason of the negligence of said Owner, his Occupant, employees, agents, customers, guests or invitees, to the extent that any such damage shall not be covered by insurance. Further, it is specifically understood that neither the Declarant, the Association, the Board of Directors, their agents, or any other Owner shall be liable to any person for injury or damage sustained by such person occasioned by the use of any portion of such Owner's Lot or Unit or any portion of the Common Areas within the Properties. Every Owner does hereby agree to defend, indemnify and hold harmless the Declarant, the Association, the Board of Directors, their agents and other Owners from and against any such claim or damage as referenced in the immediately preceding sentence hereof, including,

without limitation, legal fees and court costs WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE ASSOCIATION OR ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS, CONTRACTORS OR EMPLOYEES.

Section 3. Enforcement. The Association, Declarant or any Owner shall have the right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or abate, prevent or enjoin any violation or attempted violation hereof, or recover monetary damages caused by such violation or attempted violation. Failure or delay by the Association, Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or by court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date of this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless at the end of the original term or any extension thereof, a document signed by the Owners of not less than ninety percent (90%) of the Units evidencing their desire not to extend is properly recorded in the Real Property Records of Harris County, Texas.

Section 6. Amendment. Declarant reserves, and shall have the continuing right until the Election Date, without the joinder of any Owner, or any other person or entity to amend this Declaration for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or admissions herein, or to meet any requirements specified by the Veterans Administration, the Federal Housing Administration, the Federal National Mortgage Association, or any other similar secured or guaranteed mortgage agency or authority with an interest in any loan relating to any Unit within the Property.

These Restrictions may also be amended as follows:

- (1) So long as Declarant is a Class B Member of the Association, then the Declarant may amend this document without the approval of any additional Owners or lienholder; or
- (2) By an instrument signed by the Owners of not less than seventy-five (75%) of the Units within the Property.

Any amendment must be properly recorded in the Real Property Records of Harris County, Texas. All first Lienholders shall be given written notice of (i) any proposed termination of these Restrictions or (ii) any amendment of these Restrictions, or (iii) any proposed election not to extend these Restrictions as herein provided, or (iv) any amendments which would allow the Members to alienate the Common Area without the consent of all Lienholders, or (v) any amendment to change the ratio Assessments against the Owners as herein provided.

Section 7. Lienholder. Anything to the contrary contained herein notwithstanding, all Lienholders have the right to (a) inspect the books and records of the Association during normal working hours, and (b) receive notice of abandonment or termination of the Association.

Section 8. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 9. Extension Beyond Building Lines. In the original construction of Units upon the Property, Declarant expressly reserves the right, in order to facilitate construction and to avoid monetary of design, to extend front, back, or side walls of buildings across building lines, as reflected on the recorded plat, and Declarant reserves the right to convey in fee simple such areas to the Owner of any Unit which extends beyond said building lines.

Section 10. Notice of Condemnation or Eminent Domain. If all or any of the Common Area or a Unit is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall be entitled to participate in proceedings incident at its interest at its expense. The Association shall give timely written notice of the existence of such proceedings to all first mortgagees known to the Association to have an interest in any affected Unit. The expense of participation in such proceedings by the Association shall be paid out of the maintenance Assessments. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid it or advise it in matters relating to such proceedings. All damages and awards for any such taking shall be deposited with the Association. In no event shall the Association make any pro-rata disbursements to any Owners of such award, without the prior written consent of the first mortgagees of such Owners Unit. The Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto; or to convey such Common Area to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking, all damages and awards shall be determined for such taking as a whole and not for each Owner's interest therein. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the Owners, by a

majority vote, shall decide whether to replace or restore as far as possible the Common Area so taken and damaged.

Section 11. Rules and Regulations. The rules and regulations with respect to the day-to-day maintenance, operation and enjoyment of the Property may be amended from time to time by the Board or seventy-five percent (75%) of the voting Members. The rules and regulations are of equal dignity with, and shall be enforceable in the same manner as, the provisions of this Declaration, but in the event of a conflict, this Declaration shall control. Each Owner, by accepting conveyance or ownership of a Unit, agrees to comply with and abide by the rules and regulations, as the same may be amended from time to time.

Section 12. Result of Conflicting Regulations. These Restrictions shall not permit any action or thing prohibited by the applicable zoning laws, or the laws, rules and regulations of any governmental authority, or by specific restrictive covenants of record. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations, restrictive covenants of record, or these Restrictions shall govern and control. Notwithstanding this section, or anything else contained in these Restrictions to the contrary, in the event that any provision of the Restrictions conflicts with a provision contained in the changed Restrictions, the provision contained in the Changed Restrictive controls.

Section 13. Alternative Dispute Resolution Procedure. The parties agree to mediate in good faith to resolve any dispute under this instrument before filing a suit for damages. Following mediation, all unresolved issues shall be resolved by binding arbitration. Absent an agreement to use other rules, the arbitration will be controlled by the American Arbitration Association's Commercial Arbitration Rules.

Section 14. Attorney's Fees. Any party subject to this instrument who is the prevailing party in any proceeding, whether it is in negotiation, mediation, arbitration or litigation, against any other party brought under or in connection with this instrument or the subject matter hereof, shall be additionally entitled to recover all costs and reasonable attorney's fees, and all other related expenses, including deposition costs, arbitrator and mediator fees, travel and expert witness fees from the non-prevailing party.

Section 15. Binding Effect. This instrument shall be binding upon and inure to the benefit of the Declarant, the Association, any Owner or any tenant, invitee, or guest of any Owner and their respective heirs, executors, representatives, successors and assigns where permitted by this instrument.

Section 16. Choice of Law. This instrument shall be subject to and governed by the laws of the State of Texas, excluding any conflicts-of-law rule or principle that might refer the construction or interpretation of this instrument to the laws of another state. Each party hereby submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in Harris County, Texas.

Section 17. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, and addressed to the intended recipient at the last known address according to the records of the party delivering notice. Notice given in any other manner shall be effective only if and when received by the addressee. Any address for notice may be changed by written notice delivered as provided herein. The initial address for the Association and Declarant shall be:

FALLS AT FAIRDALE HOMEOWNERS ASSOCIATION, INC.
c/o Atlas Texas Construction and Trading, Inc.
5065 Westheimer Rd., Suite 840
Houston, Texas 77056

And such address for the Association and Declarant shall be effective unless and until a supplement to this Declaration shall be made and filed in the Real Property Records of Harris County, Texas, specifying a different address for the party filing such supplement (in which event such address specified in such supplement shall be the address, for the purposes of this **Section 17**, for the addressee named in such supplement).

Section 18. Time. Time is of the essence. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays and Texas legal banking holidays. In the event the date for performance of any obligation hereunder shall fall on a Saturdays, Sundays or Texas legal banking holiday, then that obligation shall be performable on the next following regular business day.

[Separate signature page to follow.]

Executed this 3rd day of April, 2007

DECLARANT :

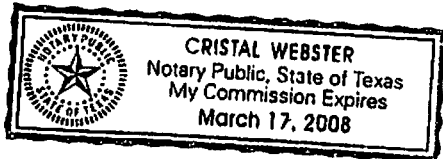
Atlas Texas Construction and Trading Inc.

By: Methymer
Name: INCI-AKPINAR
Title: Vice President

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on the 3rd day of April, 2007 by
Inci Akpinar, Vice President, Atlas
Texas Construction and Trading, a Texas Corp. on behalf of said entity.



Cristal Webster
Notary Public in and for State of Texas

AFTER RECORDING, RETURN TO:
Atlas Texas Construction and Trading, Inc.
Attn: Inci Akpinar
5065 Westheimer Rd., Suite 840
Houston, TX 77056

EXHIBIT "A"

Legal Description of the Property

Lots One (1) through Fifteen (15), in Block One (1), of the FALLS AT FAIRDALE, a subdivision in Harris County, Texas, according to the map or plat thereof recorded under Film Code No. 605296 of the Map Records of Harris County, Texas.

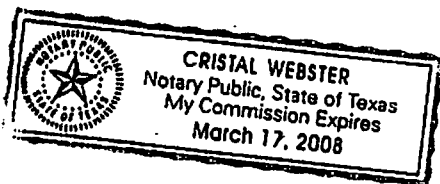
D

Consent and Subordination by Declarant's Lienholder

Declarant's Lienholder, as the holder of a lien on Declarant's Property, consents to the above Restrictions, and Declarant's Lienholder subordinates its lien to the Restrictions. The undersigned is executing this Consent and Subordination solely for the purposes described in the immediately preceding sentence. The undersigned is not a party to the attached Declaration of Covenants, Conditions and Restrictions and is not assuming any obligation or liability thereunder.

DECLARANT'S LIENHOLDER:

INDEPENDENCE BANK, N.A.



By: [Signature]
Name: OKAN AKIN
Title: EXEC. V.P.

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledges before me this 3rd day of April, 2007, by Okon Akin, as EVP of Independence Bank, N.A., on behalf of said bank.

[Signature]
Notary Public in and for
The 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.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the number Sequence on the date and at time stamped herein by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County Texas on

APR 11 2007



[Signature]
COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2007 APR 11 PM 3:17
COUNTY CLERK
HARRIS COUNTY, TEXAS
[Signature]

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts additions and changes were present at the time the instrument was filed and recorded.