

Dated: May 10, 2001

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

### MCCREARY ESTATES

THIS DECLARATION is made on the date hereinafter set forth by McCreary 100 Partners, L.P., a Texas limited partnership, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the owner of certain real property in the City of Wylie, Collin County, Texas, which is described on Exhibit "A" attached hereto and made a part hereof for all purposes (the "Property");

WHEREAS, Declarant desires to create an exclusive planned community known as McCreary Estates (the "Subdivision") on the Property and such other land as may be added thereto pursuant to the terms and provisions of this Declaration;

NOW THEREFORE, Declarant declares that the Property shall be held, sold and conveyed subject to the restrictions, covenants and conditions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a planned community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each of the Owners thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Property" shall mean and refer to the real property described on Exhibit "A", and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section 2. "Association" shall mean and refer to the McCreary Estates Homeowners Association, Inc., a Texas non-profit corporation established for the purposes set forth herein.

Section 3. "Lot" shall mean and refer to any plot of land indicated upon any recorded subdivision map (the "Plat") of the Property or any part thereof creating single-family homesites, with the exception of the Common Areas and areas dedicated in fee to a governmental authority or utility, together with all improvements thereon.

Section 4. "Unit" shall mean and refer to any residential dwelling situated upon any Lot.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to McCreary 100 Partners, L.P., a Texas limited partnership, its successors and assigns who are designated as such in writing by the Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.

Section 7. "Common Areas" shall mean and refer to that portion of the Property, if any, dedicated to the Association pursuant to the final Plat of the Property (as well as the subdivision plat of any property annexed hereto pursuant to the provisions hereof) for the use and benefit of the Owners, including, without limitation, Lots 1-4 of Block X with respect to Phase I and Lots 5-8 of Block X with respect to Phase II if annexed as aforesaid.

Section 8. "Common Maintenance Areas" shall mean and refer to the Common Areas, Common Area amenities (including the amenity center, parking areas and sidewalks) and any entrance monuments (including landscaping and lighting), the boulevard medians (including landscaping and lighting) within Viburnum Drive and Olivia Drive at its intersection with McCreary Road and the landscaping, if any, in, along and adjacent to the rights of way. Common Maintenance Areas shall not be deemed to include any drainage facilities, rights-of-way (except as described above), landscaping and other areas outside of the Common Areas and lying within dedicated public easements or rights-of-way (except as described above), or as otherwise indicated, which areas shall be maintained by the appropriate governmental authorities.

Section 9: "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for McCreary Estates, and any amendments, annexations and supplements thereto made in accordance with the terms hereof.

## ARTICLE II

### HOMEOWNERS ASSOCIATION

Section 1. Membership. The Declarant and every other Owner of a Lot shall be a Member (herein so called) of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Every Member shall have the right at all reasonable times during business hours to inspect the books of the Association.

Section 2. Funding. Subject to the terms of this Article, Declarant, for each Lot owned by Declarant, hereby covenants to pay, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association as hereinafter set forth: (1) annual assessments or charges, and (2) special assessments for capital improvements, and (3) Special Member Assessments (as hereinafter defined), and (4) Acquisition Assessments (as hereinafter defined), such Assessments (herein so called) to be established and collected as hereinafter provided. Such Assessments will remain effective for the full term (and extended term, if applicable) of the Declaration. The Assessments, together with interest, costs, collection fees, late fees, reasonable attorney's fees and other charges payable hereunder, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment shall be made (hereinafter referred to as the "Assessment Lien"). Each such Assessment, together with interest, costs, collection fees, late fees, reasonable attorney's fees, and other charges payable hereunder, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due.

### Section 3. Assessment.

(a) Units Owned by Class A Members. Subject to the terms of this Article, each Lot is hereby subject to an initial maximum maintenance charge of \$35.00 per month or \$420.00 per annum (until such maintenance charge shall be increased by the Board of Directors of the Association (the "Board" or the "Board of Directors") as provided below, but not by more than twenty percent (20%) thereof in any annual period), for the purpose of creating a fund to be designated and known as the "maintenance fund," which maintenance charge and assessment will be paid by the Owner or Owners of each Lot in advance, in monthly, quarterly or annual installments as determined by the Board, commencing as to all Lots on the conveyance of the first Lot to a Class A Member (as defined in Section 8 of this Article II), subject, however, to the provisions set forth below regarding Lots owned by the Class B Member (as defined in Section 8 of this Article II). The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly or annually, will be determined by the Board at least thirty (30) days in advance of each affected assessment period. Said rate may be adjusted from time to time by the Board as the needs of the Association may, in the judgment of the Board, require, subject, however, to the limitation on the increase thereof set forth above. The assessment for each Lot shall be uniform except as provided in Subsection (b) of this Section 3. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

(b) Units or Lots Owned by Declarant. Notwithstanding the foregoing, Declarant shall be exempt from the annual maintenance assessments charged to Owners so long as there is a Class B Membership as set forth in Section 8. For such period of time as there is a Class B Membership in effect and Declarant's Lots are exempt from assessment as provided above, and in the event the annual maintenance fund revenues are insufficient to pay the operating expenses of the Association, Declarant may, but shall not be obligated to, provide the funds necessary to make up any such deficit, provided, however, if the deficit is the result of the failure or refusal of an Owner or Owners to pay their annual maintenance assessments, the Association shall diligently pursue all available remedies against such defaulting Owners, including the immediate institution of litigation to recover the unpaid assessments, and shall reimburse the Declarant the amounts, if any, so collected.

(c) Purpose of Maintenance Fund. The Association shall establish a maintenance fund of Owner's annual maintenance assessments and shall use the proceeds of such fund in providing for normal, recurring maintenance charges for the Common Maintenance Areas for the use and benefit of all Members of the Association. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for existing landscaping) and the improvements to such Common Maintenance Areas, such as the pool, pool cabana, tot lot, sprinkler systems, sidewalks and parking areas, provided the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the property to which the maintenance fund applies; caring for vacant Lots; and doing any other thing or things necessary or desirable in the opinion of the Board to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that

the judgment of the Board in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements of the Common Maintenance Areas. The fund shall be established and maintained out of regular annual assessments.

(d) Special Assessments For Working Capital Fund, Nonrecurring Maintenance and Capital Improvements. In addition to the annual assessments authorized above, the Association may levy and assess, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any non-recurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement within any Common Areas, including fixtures and personal property related thereto. The Association shall not commingle the proceeds of such special assessment with the maintenance fund. Such proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question.

Section 4. Special Member Assessments. The Board of Directors may levy a "Special Member Assessment" (herein so called) on any Member, to the extent any directly related insurance proceeds (if any) paid to the Association are not sufficient to pay all such costs, for the purpose of:

(a) Paying the cost of any damage or loss requiring maintenance, repairs or replacements of Common Areas; which damage or loss has been determined by the Board to have been caused, either directly or indirectly, by the act(s) of such Member, or such Member's family members, guests, invitees, agents, employees, occupants or visitors; and/or

(b) Cumulative of all other rights under this Declaration or otherwise permitted by judicial process (including the award of civil damages for a violation of these covenants and restrictions as set forth in Section 202.004(c) of the Texas Property Code), in the event an Owner fails to cure a violation of these covenants and restrictions and/or any rules or regulations promulgated by the Association after proper notice, and the Association incurs legal fees to enforce these covenants and restrictions and/or any such rules or regulations, all costs incurred by the Association in connection therewith, including attorneys fees and court costs, shall be charged to the Lot and Owner thereof as a Special Member Assessment which shall be secured by the Assessment Lien; and/or

(c) In the event an Owner fails to properly maintain his or her Lot including the Residence thereon, and the Association is required to enter upon the Lot to perform such maintenance as required to bring the Lot or the Residence thereon up to the standards set forth in these covenants and restrictions, such costs incurred by the Association shall be charged to the Lot and Owner thereof as a Special Member Assessment, secured by the Assessment Lien, as set forth in Section 1 of Article X hereof; and/or

(d) Paying the remedial charges, construction delay damages or Violation Fines referenced in Section 6 of this Article II, Section 2 of Article VIII and Section 3 of Article X hereof, respectively, or as otherwise set forth herein.

Section 5. Acquisition Assessments. At any time record title to a Lot is transferred to any new Owner (excluding homebuilders), an Acquisition Assessment shall be paid to the Association by such Owner at closing in the amount of Five Hundred and No/100 Dollars (\$500.00) for each Lot so acquired. Acquisition Assessments shall be in addition to, and not in lieu of, the regular annual assessment and shall not be considered an advance payment of such assessment. Acquisition Assessments shall be deposited into a separate account and disbursed therefrom by the Association for use in covering capital replacements, reserve expenses and other such expenses incurred by the Association pursuant to the terms of this Declaration or the Bylaws of the Association, or any amendments of, or supplements to, this Declaration or such Bylaws.

Section 6. Nonpayment of Assessments: Remedies of the Association.

(a) If any Assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such Assessment shall become delinquent and shall, together with late charges, collection fees and service charges [hereinafter defined in subparagraph (c)], and interest thereon at the highest permitted lawful rate per annum and costs of collection thereof (including attorneys' fees), thereupon become a continuing debt secured by the Assessment Lien on the Lot of the non-paying Owner which shall bind such Lot in the hands of the Owner, his heirs, executors, devisees, personal representatives and assigns. The Association shall have the right to reject partial payments of an Assessment and demand the full payment thereof. The personal obligation of the Owner to pay such Assessment shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Nonetheless, the Assessment Lien for unpaid Assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise deny liability for the Assessments provided herein by non-use of the Common Areas or by abandonment of his Lot.

(b) The Association is hereby granted permission and authority by each Owner to provide, at its sole option, written notification to the holder(s) of the mortgage on the Lot of the non-paying Owner of such Owner's default in paying any Assessment when such default has not been cured within thirty (30) days.

(c) If any Assessment or any part thereof remains unpaid at the expiration of thirty (30) calendar days from and after the due date established by the Board, a late charge shall be assessed against the non-paying Owner for each month, or any part thereof, that any portion of any Assessment remains unpaid. Should any annual or special Assessment be payable in installments, the Association is authorized to accelerate the entire Assessment and demand immediate payment thereof. The late charge shall be in the amount of Twenty-Five and No/100 Dollars (\$25.00) per month and shall serve to reimburse the Association for administrative expenses incurred to collect delinquent Assessments. The Association's managing agent shall be entitled to charge an Owner a monthly collection fee to compensate the managing agent for its efforts to collect delinquent Assessments. A service charge in the amount of Twenty and No/100 Dollars (\$20.00) shall be charged for each check that is returned because of insufficient funds. The amounts of late charges and service charges may be adjusted, for time to time, by the Board consistent with any changes in the administrative costs to collect such Assessments or the Association's bank charges.

(d) If any Assessment or part thereof, late charges or service charges, are not paid when due, the unpaid amount of such Assessment, together with all late charges, collection fees and service charges, shall bear interest from and after the date when due at the rate set by the Board of Directors, not to exceed the highest permitted lawful rate per annum, and the Association may, at its election, retain the services of an attorney for collection and there shall also be added to the amount of such unpaid Assessment, late charge or service charge, any and all collection costs incurred hereunder by the Association, including reasonable attorneys' fees.

(e) The Association may, at its option, bring an action at law against the Owner personally obligated to pay any past due Assessments, or, upon compliance with the notice provisions required by law, foreclose the Assessment Lien through non-judicial foreclosure. There shall be added to the amount of such Assessment all costs incurred in such action, including attorneys' fees, and, in the event a judgment is obtained, such judgment shall include interest and

reasonable attorneys' fees, together with Court costs. Each Owner expressly vests in the Association or its assigns, the right and power to bring all actions at law or in equity foreclosing such Assessment Lien against such Owner, and the expenses incurred in connection therewith, including interest, costs and reasonable attorneys' fees, shall be chargeable to the Owner in default. Under no circumstances, however, shall Declarant or the Association be liable to any Owner or to any other person or entity for failure or inability to enforce or attempt to enforce the payment of Assessments herein.

(f) No action shall be brought to foreclose said Assessment Lien or to proceed under the power of sale herein provided in less than thirty (30) days after the date a Notice of Assessment Lien is deposited with the postal authority, certified or registered, postage prepaid to the Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Clerk of Collin County, Texas. Said Notice of Assessment Lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may include interest on the unpaid Assessments at the maximum legal rate), attorneys' fees incurred by the Association in collecting the amounts due, late charges, collection fees and expenses of collection in connection with the debt, all of which shall be secured by the Assessment Lien, and the name of the Association.

(g) Any such sale provided for above is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002 of the Texas Property Code, or in any other manner permitted by law. Each Owner, by accepting a deed to a Lot, expressly grants to the Association a power of sale as set forth in Section 51.002 of the Texas Property Code, including any successor statute, in connection with the foreclosure of the Association's Assessment Lien. The Association, through duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(h) Upon the timely curing of any default for which a Notice of Assessment Lien was recorded by the Association, the Association's attorney is hereby authorized to file of record an appropriate Release of such Notice of Assessment Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and filing or recording the Release of Notice of Assessment Lien.

(i) The Assessment Lien and the right to conduct a non-judicial foreclosure sale hereunder shall be in addition to and not in substitution of all other rights and remedies which the Association and its successors or assigns may have hereunder and by law, including the right to recover a money judgment for unpaid Assessments as above provided.

Section 7. Subordination of the Assessment Lien to Mortgages. The Assessment Lien provided for herein shall be subordinate and inferior to all mortgage or deed of trust liens, present and future, given, granted and created by or at the insistence and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the foreclosure sale, on a pro-rated basis, whether public or private, of such property pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve such Lots from liability for the amount of any pro-rated Assessments or any Assessments thereafter becoming due or from the lien securing payment of any such subsequent Assessment.



Section 8. Voting Rights. The Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be all Owners with the exception of Declarant [until the occurrence of the events referenced in Section 8(b) below which converts Declarant's Class B Membership to a Class A Membership] and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in a Lot, each such person shall be a Member, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any one Lot.

(b) Class B. The Class B Member shall be Declarant who shall be entitled to ten (10) votes for each unoccupied Lot owned by it. The Class B Membership shall cease and be converted to a Class A Membership (i) one hundred (100) days after the conveyance of the Lot which causes the total votes outstanding in the Class B Membership to be less than fifty (50), or (ii) ten (10) days after conveyance of the last Lot owned by Declarant, or (iii) upon the filing in the Land Records of Collin County, Texas, of a notice signed by Declarant of the termination of the Class B Membership, whichever occurs first. The Class B Membership shall be reinstated at any time before the expiration of twenty (20) years from the date of conveyance of the first Lot if additional Lots owned by Declarant are annexed to this Declaration in sufficient numbers to restore a ratio of at least one (1) Class B Lot for each ten (10) Class A Lots within the Property.

(c) Suspension. All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any Assessment duly established pursuant to this Article or is otherwise in default hereunder or under the Bylaws or rules and regulations of the Association and such suspension shall apply to the proxy authority of any voting representative, if any.

Section 9. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized herein shall be sent to all Members, or delivered to their Units, not less than fifteen (15) days nor more than forty-five (45) days in advance of the meeting. Unless otherwise provided in this Declaration, the presence of Members, in person or by proxy, entitled to cast thirty percent (30%) of the votes of the membership shall constitute a quorum at any such meeting. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be two-thirds (2/3rds) of the quorum requirement for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum (the quorum requirement being reduced for each such meeting). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9. Exempt Property. The following property otherwise subject to this Declaration shall be exempt from the Assessments and charges created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All Common Areas as defined in Article I hereof;
- (c) Any and all areas which have been reserved by the Declarant on the recorded Final Plat(s) of the Property; and
- (d) All Lots owned by Declarant as a Class B Member until conveyance to a Class A Member.

## ARTICLE III

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

Section 1. Purpose of Maintenance Fund. The Board, for the benefit of the Owners, shall provide and shall pay out of the maintenance fund provided in Article II above, the following:

- (a) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.
- (b) Care and preservation of the Common Maintenance Areas.
- (c) Legal and accounting services, if needed.
- (d) A policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided in Article IV below.
- (e) Workers compensation insurance to the extent necessary to comply with any applicable laws, if needed.
- (f) Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

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

Section 2. 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 assessment purposes with regard to the Common Areas, if any, 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 Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.
- (e) To make reasonable rules and regulations for the operation of the Common Areas and to amend or supplement them from time to time.



(f) To make available for inspection by Owners within sixty (60) 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.

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

(h) To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

(i) To collect all Assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

(j) To maintain all portions of the Common Areas within any drainage easements so that, at a minimum, positive surface drainage within such drainage easement areas will be maintained at all times.

Section 3. Board Power Exclusive. The Board shall have the exclusive right to contract for all goods, services and insurance, the payment of which is to be made from the maintenance fund, and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

Section 4. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

#### ARTICLE IV

##### TITLE TO COMMON AREAS

Section 1. Association to Hold. The Association shall assume all maintenance obligations with respect to the Common Areas dedicated to the Association pursuant to the Plat of Phase I of McCreary Estates and any subdivision plat of any additional property annexed hereto pursuant to the terms hereof. Upon the dedication of the Common Areas to the Association pursuant to the Plat, fee simple title to the Common Areas shall thereafter be in the name of the Association, subject to the easements and other matters affecting the Common Areas as set forth herein, on the Plat or otherwise of record in the real property records of Collin County, Texas.

Section 2. Liability Insurance. From and after the date on which title to any Common Area vests in the Association, the Association has the authority to purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its Members, covering occurrences on the Common Areas. The policy limits shall be as determined by the Board of Directors. The Association shall use its best efforts to see that such policy shall contain, if available, cross liability endorsements or other appropriate provisions for the benefit of the Members, Board of Directors, the management company and other insureds, as their respective interests may be determined.

Section 3. Condemnation. In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps that it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. In the event the Board determines that the funds cannot be used in such a manner due to lack of available land for additional Common Areas or for whatever reason, any remaining funds may be utilized by the Association for the general maintenance fund.

## ARTICLE V

### EASEMENTS

Section 1. Utility Easements. As long as Class B Membership shall be in effect, Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through, and under any portion of the Common Areas or any portion of any Lot outside of the permitted building area of such Lot, for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television. Declarant, for itself and its designees, reserve the right to retain title to any such easements. Upon cessation of Class B Membership, the Association shall have the right to grant the easements described herein.

Section 2. Declarant's Easement to Correct Drainage. As long as the Class B Membership shall be in effect, or for two years from the date of filing of the Plat, whichever is greater, Declarant hereby reserves a blanket easement on, over and under the ground within the Property to maintain and correct drainage of the surface waters and other erosion controls, in order to maintain reasonable standards of health, safety, and appearance and shall be entitled to remove trees or vegetation, without liability for replacement of damage, as may be necessary to provide adequate drainage for any portion of the Property. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any greater duty upon Declarant or the Association to correct or maintain any drainage facilities within the Property than that which is specifically set forth in this Declaration.

Section 3. Easement for Unintentional Encroachment. Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Areas caused by or resulting from construction, repair, shifting, settlement, or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching property to the extent of such encroachment.

Section 4. Entry Easement. In the event that an Owner fails to maintain such Owner's Lot as required herein, or in the event of the need for emergency repairs, Declarant hereby reserves for itself and the Association an easement and right of entry on, over and under the ground within the Property to do the work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass and Declarant and the Association shall not be liable for any damage so created unless such damage is caused by Declarant's or the Association's willful misconduct or gross negligence.

Section 5. Drainage and Utility Easements. Easements for the installation and maintenance of utilities, storm water drainage facilities, surface drainage and storm water retention and/or detention ponds are reserved as may be dedicated on the recorded Plat. Within these easement areas, no structure, plant or material shall be placed or permitted to remain which may hinder or change the direction or flow of drainage channels or slopes within the easement area. The easement area within a particular Lot shall be maintained

continuously by the Owner of the Lot so as to maintain, at a minimum, the positive surface drainage within those easement areas at all times. Furthermore, any use restrictions and maintenance requirements applicable to the foregoing areas as set forth on the Plat shall be complied with by the Owner of such areas.

Section 6. Temporary Completion Easement. All Lots shall be subject to an easement of ingress and egress for the benefit of Declarant, its employees, subcontractors, successors and assigns (including homebuilders), over and upon the front, side or rear yards of the Property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent to the Property, provided that such easement shall terminate twelve (12) months after the date such Lot is conveyed to the Owner by Declarant.

## ARTICLE VI

### PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every Owner shall have the right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to establish and publish (and to amend and supplement) rules and regulations governing the use of the Common Areas affecting the welfare of the Association Members;

(b) The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for such purpose and subject to the conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of each Class of Membership has been recorded agreeing to such dedication or transfer;

(d) All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the Owners, and all of their grantees, and their respective heirs, personal representatives, successors and assigns, perpetually and in full force;

Section 2. Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easement and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

Section 3. Re-zoning Prohibited. No Lot shall be re-zoned to any classification allowing commercial, institutional or other non-residential use, nor shall the Property be re-zoned from its existing Planned Development designation, without the express consent of the Association and Declarant (as long as Declarant owns any Lot subject to this Declaration), which consent may be withheld in the Association's or Declarant's sole discretion. Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved re-zoning at the expense of the enjoined party.

actions are necessary to relieve hardship or permit good architectural planning to be effectuated, Declarant also reserves the right, notwithstanding any provision hereof to the contrary, to consolidate, resubdivide and replat any Lot now or hereafter owned by Declarant without the requirement of any notice or consent of any Owner.

Section 7. Sales Office. Declarant may designate the location of a Sales Office for use in offering Lots for sale and for all purposes incident thereto. Said use is intended as temporary and shall cease at such time as seventy-five percent (75%) of the Lots in all have been sold and living Units constructed thereon. The foregoing does not apply to Model Homes.

Section 8. Rights and Obligations. The provisions of this Declaration and the Articles of Incorporation and Bylaws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all the Owners and their respective heirs, representatives, successors, purchasers, grantees, mortgagees and assigns. By the recording of the acceptance of a deed conveying a Lot of any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound and subject to all of the provisions of this Declaration and the Articles of Incorporation and Bylaws, whether or not mention thereof is made in said deed.

Section 9. Failure of Association to Perform Duties. Should the Association fail to carry out its duties as specified in this Declaration, the City of Wylie or its lawful agents shall have the right and ability, after due notice to the Association, to remove any landscape system, features or elements that cease to be maintained by the Association; to perform the responsibilities of the Association if the Association fails to do so in compliance with any of the provisions of this Declaration or of any applicable City codes, ordinances or regulations; to assess the Association for all costs incurred by the City in performing said responsibilities if the Association fails to do so; and to avail itself of any other enforcement actions available to the City pursuant to state law or City codes, ordinances or regulations. Should the City exercise its rights as specified above, the Association shall indemnify and hold harmless the City of Wylie from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscaping systems, features or elements that cease to be maintained by the Association or from the City's performance of the aforementioned operations, maintenance or supervision responsibilities of the Association due to the Association's failure to perform said duties.

Section 10. Lot Sale and Repurchase Provisions. Should, for any reason, (1) the Owner of a Lot elect to resell its Lot rather than to proceed with construction of a residence on such Lot, or (2) the Owner of a lot fails to commence construction of a residence on such Lot within eighteen (18) months following such Owner's purchase thereof from Declarant, Declarant, and/or its assigns, shall have the option to repurchase the Lot at the purchase price paid by the Owner thereof to Declarant for such Lot at the initial closing thereof. If Declarant does not exercise its option to repurchase the Lot by written notice to the Owner within thirty (30) days after (A) the Owner's written notice of the availability of such option with respect to subclause (1) above, or (B) the later of the date upon which (x) the Owner has failed to commence construction of a residence on such Lot within eighteen (18) months following such Owner's purchase thereof from Declarant, or (y) the Owner has provided written notice to Declarant that it has failed to commence construction within said eighteen (18) month period, then the Owner may sell the Lot to any other party who shall be obligated to abide by all of the provisions of this Declaration. In the event Declarant elects to repurchase such Lot, it shall consummate such repurchase within sixty (60) days after the exercise of its repurchase option.

[Signature Page to follow]

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year first above written.

DECLARANT:

MCCREARY 100 PARTNERS, L.P.,  
a Texas limited partnership

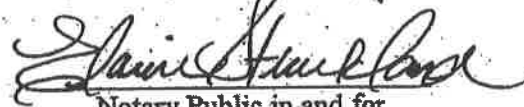
By: Lafayette Properties, Inc.,  
a Texas corporation  
its General Partner

By:   
James J. Melino, President

STATE OF TEXAS           S  
                                      S  
COUNTY OF DALLAS       S

This instrument was acknowledged before me on the 10th day of May, 2001, by James J. Melino, President of Lafayette Properties, Inc., a Texas corporation on behalf thereof as the General Partner of McCreary 100 Partners, L.P., a Texas limited partnership, on behalf thereof.



  
Notary Public in and for  
the State of Texas

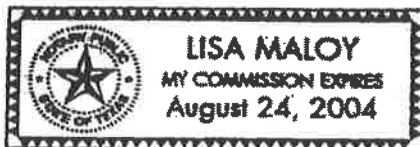
RATIFICATION BY LIENHOLDER:

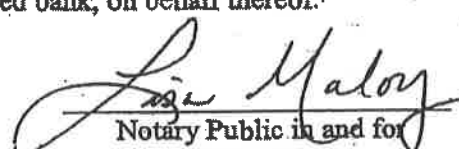
COMERICA BANK - TEXAS

By:   
Name: Alan R. Williams  
its [Vice] President

STATE OF TEXAS           §  
                                      §  
COUNTY OF DALLAS       §

This instrument was acknowledged before me on May 11<sup>th</sup>, 2001, by Alan Williams, [Vice] President of Comerica Bank - Texas, a state chartered bank, on behalf thereof.



  
Notary Public in and for  
the State of Texas

Jjm\doc\0300\Declaration-McCreary 100

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR MCCREARY ESTATES - Page 23

development uses resulting in the creation of a successful housing development within an overall master planned community.

### SECTION III

The property herein described shall be used only in the manner and for the purposes authorized by the Comprehensive Zoning Ordinance of the City of Wylie, as amended.

### SECTION IV.

Any person violating the provisions of this ordinance, or any part hereof, shall be guilty of committing an unlawful act and shall be subject to the general penalty provisions of Section 37 of the Zoning Ordinance, as the same now exists or is hereafter amended.

### SECTION V

Should any paragraph, sentence, sub-division, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid the same shall not affect the validity of this ordinance as a whole or any part of provision thereof, other than the part or parts as declared to be invalid, illegal, or unconstitutional.

### SECTION VI

This ordinance shall be in full force and effect from and after its adoption by the City Council and publication of its caption as the law and the City Charter provide in such cases.

### SECTION VII

That all other ordinances and code provisions in conflict therewith are hereby to the extent of any such conflict or inconsistency and all other provisions of the Wylie City Code not in conflict herewith shall remain in full force and effect.

### SECTION VIII

The repeal of any ordinance, or parts thereof, by the enactment of this Ordinance, shall not be construed as abandoning any action now pending under or by virtue of such ordinance; nor shall it have the effect of discontinuing, abating, modifying or altering any penalty accruing or to accrue, nor as effecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this ordinance.



4918 0252

DULY PASSED AND APPROVED by the City Council of the City of Wylie,  
Texas, this the 18<sup>th</sup> day of December, 1999.

By

John Mondy  
Mayor

ATTEST:

Aime Nemer  
~~Barbara Salinas~~  
Deputy City Secretary

ING all that lot, tract or parcel of land situated in the City of Wylie, Collin County, Texas, out of the Moses Sparks Survey, Abstract No. 849 and being a part of the 306.965 acre tract of land conveyed to Parker International Corporation by deed recorded in County Clerk's File No. 94-0076703 of the Land Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8" iron rod set for the intersection of the North line of the St. Louis & Southwestern Railroad (100 foot right of way now occupied by Dallas Area Rapid Transit), with the East line of a 50 foot Roadway and Utility Easement conveyed to the City of Wylie by deed recorded in Volume 2240 at Page 941 of the Deed Records of Collin County, Texas, said 50 foot right of way being known as McCreary Road;

THENCE North 1 degree 51 minutes 13 seconds East, along the East line of McCreary Road and the East line of said 50 foot Roadway and Utility Easement, a distance of 1078.80 feet to a 5/8" iron rod set for angle point;

THENCE North 1 degree 50 minutes 14 seconds East and continuing along the East line of McCreary Road and the East line of the Roadway and Utility Easement conveyed to the City of Wylie for a distance of 2262.30 feet to a 5/8" iron rod set for corner, said point being in the South line of a 45.3768 acre tract of land conveyed to Ashton Custer, L.L.C. by deed recorded in County Clerk's File No. 98-0009496 of the Land Records of Collin County, Texas, said point also being in a line of the Parker International Corporation 306.965 acre tract;

THENCE South 89 degrees 20 minutes 39 seconds East (South 89 degrees 26 minutes 50 seconds East deed) along the South line of Ashton Custer L.L.C. 45.3768 acre tract and common to the Parker International Corporation 306.965 acre tract for a distance of 1252.26 feet to a 2" iron pipe found for corner, said point being in the West line of a 135.8488 acre tract of land conveyed to Ashton Custer L.L.C. by deed recorded in County Clerk's File No. 98-0008878 of the Land Records of Collin County, Texas;

THENCE South 1 degree 09 minutes 25 seconds West (South 0 degrees 17 minutes 00 seconds West deed) along the West line of said Ashton Custer L.L.C., 135.8488 acre tract and following an old tree row and fence line for a distance of 1373.20 feet (2681.75 feet deed) to a 1" iron pipe found for angle point;

THENCE South 0 degrees 26 minutes 17 seconds East and continuing along said Ashton Custer L.L.C. 135.8488 acre tract for a distance of 1308.52 feet to a 5/8" iron rod found for the Southwest corner of said 135.6466 acre tract, same being the Northwest corner of a 27.2413 acre tract to Kathleen Williams by deed as recorded in Volume 562 at Page 361 of the Deed Records of Collin County, Texas;

THENCE South 0 degrees 27 minutes 35 seconds West (South 0 degrees 22 minutes 50 seconds West deed) along the West line of said 27.2413 acre tract for a distance of 781.92 feet (781.81 feet deed) to a 5/8" iron rod found for corner in the North line of the aforesaid St. Louis & Southwestern Railroad right of way;

THENCE North 84 degrees 05 minutes 25 seconds West (North 84 degrees 08 minutes 07 seconds West deed) along the North line of said St. Louis and Southwestern Railroad right of way and the South line of the aforementioned Parker International Corporation tract for a distance of 1342.74 feet to the PLACE OF BEGINNING AND CONTAINING 100.5989 ACRES OF LAND, more or less.

On April 2, 2002  
 Doc/Num: 005391  
 Recording Fee: \$13.00  
 Receipt #: 13912

INVESTMENT PROPERTY (the  
"Property") located in Collins County,  
Georgia.

in Golds County. Rec

Examination by Declarant of

Second Phase Property")  
as McCrery Estates No.  
thereof recorded in File

ment by Declarant of the

ts.

property is encumbered by  
subject to all covenants,  
as amended and modified  
the date this Annexation  
all include both the First  
as shown on the Phase II  
ation.

deleted in its entirety and  
61. Productions

idential use only, and no other than one detached except for improvements 1-10, inclusive, of Block one story in height) and type structure other than behind the front line of the

OK

of the buildings must compliment that of the residential building. Sheet metal siding and roofs are expressly prohibited. Notwithstanding anything contained herein to the contrary, no house may be constructed with an exterior elevation substantially similar to any other house constructed or under construction on either side of such house on the same side of the street from such house or nearer than the three houses across the street from such house, subject to review by the Committee."

FURTHERMORE, there is hereby added to Article X of the Declaration a new Section 11 as follows:

"Section 11. Liability Limitations. Neither the Declarant, nor any Member, officer of the Association or member of the Board of Directors of the Association shall be personally liable for debts contracted for, or otherwise incurred by the Association, or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither the Declarant, the Association, its directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. The Common Areas may be subject to storm water overflow, natural bank erosion and other natural or man-made events or occurrences to extents which cannot be defined or controlled. Under no circumstances shall the Declarant ever be held liable for any damages or injuries of any kind or character or nature whatsoever resulting from: (i) the occurrence of any natural phenomena; (ii) the failure or defect of any structure or structures situated on or within the Common Areas; and (iii) any act, conduct, omission or behavior of any individual, group of individuals, entity or enterprise occurring on, within or related to the Common Areas."

EXECUTED as of the 10th day of April, 2002.

DECLARANT:

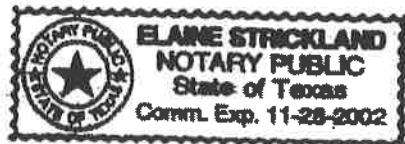
MCCREARY 100 PARTNERS, L.P.,  
a Texas limited partnership


By: Lafayette Properties, Inc.,  
a Texas corporation  
its General Partner

By:   
James J. Melino, President

STATE OF TEXAS           S  
                                      S  
COUNTY OF DALLAS       S

This instrument was acknowledged before me on the 10th day of April, 2002, by James J. Melino, President of Lafayette Properties, Inc., a Texas corporation on behalf thereof as the General Partner of McCreary 100 Partners, L.P., a Texas limited partnership, on behalf thereof.



  
Notary Public in and for  
the State of Texas

*M*

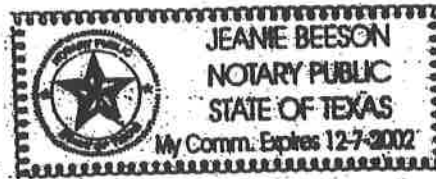
RATIFICATION BY LIENHOLDER:

REGIONS BANK

By: [Signature]  
Name: S. Richard Shook  
its [Vice] President

STATE OF TEXAS

COUNTY OF DALLAS



This instrument was acknowledged before me on Apr. 15, 2002 by  
S. Richard Shook [Vice] President of Regions Bank, a state chartered bank, on behalf thereof.

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

AFTER RECORDING, RETURN TO:

James J. Melino  
8235 Douglas Avenue  
Suite 650, LB-65  
Dallas, Texas 75225

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## ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. Appointments. Declarant shall designate and appoint an Architectural Control Committee (herein called the "Committee") composed of three (3) individuals, each generally familiar with the residential and community development design matters and knowledge about Declarant's concern for a high level of taste and design standards for the Property. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Property consistent with this Declaration.

Section 2. Successors. In the event of the death, resignation or removal by Declarant of any member of the Committee, the remaining members shall appoint a successor member. In default of such appointment, Declarant shall have full authority to designate and appoint a successor. No member of the Committee shall be entitled to compensation for, or to be liable for claims, causes of actions or damages arising out of, services performed pursuant to this Declaration.

Section 3. Approval of Plans and Specifications.

(a) The Committee shall have the right to disapprove any submitted Plans that are not in compliance with this Declaration if they are incomplete or if the Committee determines that such Plans are deficient for any reason. The Committee may base its approval or disapproval on, among other things:

(1) the architectural character of all proposed improvements, taking into consideration the aesthetic quality of any structure with respect to height, form, siding, exterior materials and roofing materials (with regard to type, scale, texture, color and durability);

(2) harmony of external design with improvements on other Lots.

(3) relation of topography, grade and finished ground elevation to that of adjoining Lots;

(4) conformity of the drainage plan with the drainage plan for the entirety of the Subdivision;

(5) screening of mechanical and other installations;

(6) extent and quality of landscape areas; and

(7) compliance with the purpose and general plan, intent and provisions of this Declaration, including, without limitation, the location of and design and materials for retaining walls.

(b) An Owner desiring to construct or install any improvements on such Owner's Lot must submit to the Committee its Plans, in duplicate, for such improvements that contain sufficient detail and information to show the following (the "Plans"):



(1) general plans for the residence showing exterior shape and location, elevations; height, exterior materials, window locations, roofing and colors of all exterior surfaces;

(2) Lot grading for drainage;

(3) retaining wall location, elevations and materials;

(4) fencing location, elevations and materials;

(5) driveway location and materials;

(6) swimming pool(s);

(7) landscaping; and

(8) other matters specifically required by the Committee.

(c) Approval of the Plans shall be based upon a determination by the Committee as to whether or not in its judgment, such Plans adequately meet objectives established for the Subdivision, with regards to aesthetic quality as well as meeting the requirements of this Declaration. Approval of any Plans with regard to certain improvements shall not be deemed a waiver of the Committee's right, in its sole and exclusive discretion, to disapprove similar Plans, or any of the features or elements included therein, for any other improvements or to refrain from granting similar variances.

(d) If any submission of Plans is not complete or does not include all data required by this Declaration, the Committee, within twenty-five (25) days after such submission, shall notify the Owner of such deficiencies, and such Plans shall not be considered to have been submitted until such deficiencies have been corrected. At such time as the Plans meet the approval of the Committee, one (1) set of Plans will be retained by the Committee and the other set of Plans will be marked "Approved" and returned to the Owner or such Owner's designated representative, accompanied by a statement of complete approval or approval based on certain conditions. If the Plans are not found to be in compliance with this Declaration, one (1) set of such Plans shall be returned marked "Disapproved", accompanied by a statement of the items found not to be in compliance with this Declaration or not to be acceptable to the Committee. Any modification or change to the approved Plans must again be submitted to the Committee for its inspection, review and approval.

(e) In the event a particular Owner engages in the business of constructing residential buildings for the purpose of resale or lease, such Owner may, in lieu of the plan approval process set forth above, submit to the Committee its plans and specifications for the various architectural plans with exterior elevations it intends to construct on the Lots, in duplicate, which plans and specifications shall contain sufficient detail and information to show the general plans for such residence showing exterior shape and location, elevations, height and window locations. The Committee shall approve or disapprove of same in the manner provided above. No further approvals of the Committee will thereafter be required for improvements by such Owner on the Lots unless such Owner materially modifies the plans and specifications for such approved exterior elevations or new exterior elevations are proposed by such Owner; provided, however, the Committee reserves

the right to later require the submission for approval of any or all other matters required by the provisions set forth above (such as, without limitation, plot plans, landscape plans, fences, retaining walls, etc.). The plans and specifications for any such new or modified exterior elevations shall be subject to the approval of the Committee as provided above. Notwithstanding such general approval of the plans and specifications, all improvements constructed on a Lot shall comply strictly with the provisions of this Declaration. Any failure to so comply will entitle the Declarant, the Association and/or the Committee to exercise any and all rights of enforcement set forth in this Declaration.

Section 4. Standards. The committee shall have sole and absolute discretion with respect to taste, design and all standards that are specified herein. One objective of the Committee is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built on the Property.

Section 5. Termination: Continuation. The Committee appointed by Declarant shall cease to exist on the earlier of: (a) the date on which all the members of the Committee file a document declaring the termination of the Committee, or (b) the date on which Units have been constructed on all Lots within the Property. Notwithstanding the above provision, at any time following the termination of the Committee appointed by Declarant, the Board of Directors of the Association shall have the right and authority to record an instrument which provides for a committee appointed by such Board of Directors (which may include one or more of such Board members) to continue the functions of the Committee appointed by Declarant. If there is no Committee appointed by Declarant or committee appointed by the Board as aforesaid, no approval by the Declarant's Committee or Board's committee shall be required under this Declaration until any such appointment shall occur and variations from the standards set forth in this Declaration shall be made in accordance with the general development standards as reflected in the plans, construction materials, landscaping and other matters approved by the Declarant's Committee or Board's committee during their periods of control.

Section 6. Liability of Committee. The members of the Committee shall have no liability for the decisions made by them so long as such decisions are made in good faith and are not arbitrary or capricious. Any errors in or omissions from the Plans submitted to the Committee shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Committee shall have no obligation to check for errors in or omissions from any such Plans, or to check for such Plans' compliance with the general provisions of this Declaration, City codes, State statutes or the common law, whether the same relate to Lot lines, building lines, drainage, easements or any other issue.

Section 7. Failure of Committee to Act. In the event that any Plans are submitted to the Committee as provided herein, and such Committee shall fail either to approve or reject such Plans for a period of thirty (30) days following such submission, the Committee shall be deemed to have disapproved same.

## ARTICLE VIII

### USE RESTRICTIONS

Section 1. Types of Buildings Permitted. All Lots shall be used for residential use only, and no building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one-half stories in height (except for improvements on Lots 1-7, inclusive, of Block K and Lots 1-10, inclusive, of Block N, which shall not exceed one story in height) and a private garage for not less than two (2) automobiles. Only one accessory type structure other than those mentioned above is permitted provided such structure is located behind the front line of the residential

building and the minimum required side yard distances are maintained. The architecture of the buildings must compliment that of the residential building. Sheet metal siding and roofs are expressly prohibited. Notwithstanding anything contained herein to the contrary, no house may be constructed with an exterior elevation substantially similar to any other house constructed or under construction on either side of such house on the same side of the street from such house or nearer than the three houses across the street from such house, subject to review by the Committee.

**Section 2. Timing for Construction Completion.** All residences, including driveways, shall be completed and a certificate of occupancy issued with respect thereto within eighteen (18) months from the time the building permit therefor is issued. If a residence is not completed on any Lot, and the certificate of occupancy therefor issued, on or before the expiration of eighteen (18) months from the date of the issuance of a building permit with respect thereto, the Board shall have the authority and the right in its sole and absolute discretion to assess and collect from the Owner of such Lot, as liquidated damages, the sum of Two Hundred and No/100 Dollars (\$200.00) per day for each day of non-compliance herewith, commencing on the first (1st) day of non-compliance herewith and continuing thereafter until the residence is completed and a certificate of occupancy therefor is issued (such amount being a reasonable estimate of the Association's actual damages resulting from any such delays, which actual damages would be difficult to ascertain). Any such assessment shall be a Special Member Assessment.

**Section 3. Minimum and Maximum Floor Area, Roofs and Exterior Walls.** Each single family dwelling constructed on any Lot shall conform to the requirements of City of Wylie Ordinance Number 99-39 (the "Ordinance"), a copy of which is attached hereto and made a part hereof for all purposes as Exhibit "B". Furthermore, the floor area of any dwelling on (a) an SF-A Lot (as defined in the Ordinance) shall be a minimum of 1,800 and maximum of 3,300 square feet, and (b) an SF-B Lot (as defined in the Ordinance) shall be a minimum of 2,150 and maximum of 4,000 square feet, and (c) an SF-C Lot (as defined in the Ordinance) shall be a minimum of 2,250 square feet, with no maximum, in all cases exclusive of garages, breezeways and porches.

**Section 4. Setbacks.** No building shall be located on any Lot nearer to the property line for such Lot than the building line for such Lot as designated on the Plat or as may otherwise be required by the Ordinance. If two or more Lots are consolidated into one building site in conformity with the provisions of Section 6 of this Article VIII, these building setback provisions shall be applied to such resultant building site as if it were one original Lot. The ordinances of the City of Wylie, to the extent applicable to the Property on a less permissive basis than the Plat or the provisions of this Declaration, shall control over the provisions hereof or of the Plat.

**Section 5. Driveways.** All driveways are to be concrete or masonry. All driveways must be completed prior to occupancy. Gravel driveways are expressly prohibited. All driveway coatings shall be subject to the approval of the Committee.

**Section 6. Combining Lots.** Any person or entity owning two (2) or more adjoining Lots, after first obtaining Declarant's prior written consent (until such time as Declarant no longer owns a Lot), may consolidate such Lots into a single building location for the purpose of constructing one (1) residential structure thereon and such other improvements as are permitted herein; provided, however, any consolidation thereof must comply with the laws, rules, ordinances and regulations of the City of Wylie. In the event of any such consolidation, the consolidated building lot shall continue to be treated as two (2) or more Lots for purposes of applying the provisions of this Declaration. Combining portions of Lots into a single building lot is prohibited.

**Section 7. Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.

**Section 8. Development Activity.** Notwithstanding any other provisions herein to the contrary, Declarant and its successors and assigns (including homebuilders) shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of the dwelling Units on the Property.

**Section 9. Temporary Structures.** No structure of a temporary character, including, without limiting of the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, shall be used on any Lot at any time as a residence, either temporarily or permanently.

**Section 10. Signs and Picketing.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view, except with respect to the following:

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

(b) Declarant and/or Homebuilder Signs. Declarant and/or home builders with Declarant's approval may erect and maintain a sign or signs or a flag or flags for the construction, development, operation, promotion, marketing and sale of the Lots and/or the Units constructed or to be constructed on the Lots.

(c) Political Signs. No more than one political sign may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such sign shall not be erected more than ninety (90) days in advance of the election to which they pertain and is removed within fifteen (15) days after the election.

(d) Subcontractor Signs. No more than one subcontractor (such as a landscaping or swimming pool contractor) at any one time may temporarily erect their sign not to exceed 2' X 3', which sign shall be removed within thirty (30) days after completion of the job.

In addition to the foregoing, to protect the safety and harmony of the community, no person shall engage in picketing on any Lot, easement, right-of-way or Common Area within or adjacent to the Property, nor shall any vehicle parked, stored or driven in or adjacent to the Property bear or display any signs, slogans, symbols, words or decorations intended to create controversy, invite ridicule or disparagement, or interfere in any way with the exercise of the property rights, occupancy or permitted business activities of any Owner or Declarant.

**Section 11. Campers, Trucks, Boats, Recreational Vehicles and Machinery and Equipment.** No boat, trailer, marine craft, hovercraft, aircraft, recreational vehicle, pick-up camper, travel trailer, motor home, camper body or similar vehicle or any machinery or equipment (including lawn maintenance machinery or equipment) may be parked for storage in the driveway or front yard of any dwelling or parked on any public street on the Property, nor shall any such vehicle, machinery or equipment be parked for storage or stored in the side or rear yard of any Residence unless completely concealed from public view. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a Residence in the immediate vicinity.



Section 12. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

Section 13. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Rubbish, trash, garbage and other waste shall be kept only in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 14. Sight Distances and Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot with the triangular area formed by the street boundary lines and a line connecting them at points twenty-five (25) feet from the intersection of the street boundary lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street boundary line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 15. Garage Doors. Garage doors must remain closed to the extent practicable.

Section 16. Window Coolers. No window or wall type air-conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any residential building within the Property.

Section 17. Parking and Inoperable Vehicles. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas or within an easement area. All vehicles kept on a Lot must be inspected and licensed, and no inoperative motor vehicles and/or machinery or equipment shall be kept on any Lot unless housed within the garage.

Section 18. Commercial or Institutional Use. Business, trade, manufacturing, commercial or similar activities are not allowed to be conducted on the Property or any Lot, except that an Owner or occupant residing on a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the community; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Property; (d) the business activity or hobby does not involve the repair or refurbishment of automobiles; and (e) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Committee.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provisions of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged on a full or part time basis, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this subsection.

This subsection shall not apply to any activity conducted by the Declarant or a homebuilder with respect to their development, construction and sale of Lots in the Property or their use of any Lots within the Property.

**Section 19. Fences, Walls.** All fences and walls shall conform strictly to the requirements of the Ordinance. No fence, wall or hedge shall be erected, placed or altered on any Lot nearer to any street than the minimum front building setback line indicated on the applicable Plat, unless otherwise permitted by the Committee or the City of Wylie, Texas. Except as specifically set forth below, all retaining walls are to be of brick, concrete or stone. All fencing walls or screening fences shall be of first quality residential type which is harmonious and compatible with the residential character of the development. All fences and walls shall be maintained in a sound state by the Owner and the Committee shall have the right to order compliance with this provision. Failure to maintain a fence or wall in a sound, orderly and secure state shall constitute a violation of this restriction. Neither the Association nor the Declarant shall have any responsibility whatsoever for the installation or maintenance of fencing or walls.

**Section 20. Antennae, Satellite Dishes and Solar Collectors.** The erection, construction, placement or installation of any television, radio or other electronic towers, serials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication upon a Lot or upon any improvements thereon is prohibited, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part I, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that reception of an acceptable signal would not be impaired or the cost of installation would not be unreasonably increased, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land-use and building regulations.

~~No Owner may erect or maintain solar collector panels or other similar solar collector equipment upon any Lot unless such apparatus is not visible from the street or neighboring property and must be integrated with the dwelling and surrounding landscape.~~

**Section 21. Chimneys.** All fireplaces, flues, smokestacks and spark arrestors shall be completely enclosed from public view in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the dwelling.

**Section 22. Clothes Hanging Devices.** Exterior clothes hanging devices shall not be permitted.

**Section 23. Window Treatment.** No aluminum foil, reflective film, sheets, bedding, newspapers or other similar treatment shall be placed on window or glass doors.

**Section 24. Building Standards.** Notwithstanding anything contained herein to the contrary, no building or other improvement (including landscaping) shall be erected, planted or maintained on any Lot unless, at a minimum, it complies fully with all applicable standards therefor imposed by any governmental laws, rules, regulations and ordinances applicable to the Property, including, without limitation, the Ordinance. IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENTS AND ANY REQUIREMENTS OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THIS DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH



CASE SUCH MANDATORY GOVERNMENTAL REQUIREMENTS SHALL APPLY AND COMPLIANCE THEREWITH SHALL NOT BE DEEMED TO BE A BREACH OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL.

## ARTICLE IX

### ANNEXATION

Section 1. Annexation by Declarant. At any time during the initial term of this Declaration, Declarant may, at its sole option, annex additional property to this Declaration, upon which annexation such property shall be subject to the terms hereof to the same extent as if originally included herein and shall be additionally subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant. Annexation shall be evidenced by a written Declaration of Annexation executed by Declarant setting forth the legal description of the property being annexed and any such additional restrictive covenants to be applied to such annexed property.

Section 2. Annexation by Action of Members. The Board may at any time request approval of the Membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved in writing by Members entitled to cast two-thirds (2/3) of the total votes in both classes of Membership. Any property that is contiguous to existing property encumbered by this Declaration may be annexed hereto according to the foregoing requirements; provided, however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation as set forth in Section 1 of this Article IX executed by the parties herein described.

Section 3. No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of Declarant or any other Member to annex any property to this Declaration and no owner of property excluded from this Declaration shall have any right to require the annexation of such property to this Declaration.

Section 4. Effect of Annexation on Class B Membership. In determining the number of Lots owned by Declarant for the purpose of Class B Membership status according to Article II, Section 8, the total number of Lots covered by this Declaration, including all Lots annexed hereto, shall be considered. If Class B Membership has previously expired and the annexation of additional property restores the ratio of Lots owned by Declarant to the number required for Class B Membership, such Class B Membership shall be reinstated.

## ARTICLE X

### GENERAL

Section 1. Owners Maintenance Responsibilities. The Owner of each Lot shall be responsible for the proper maintenance and upkeep of the Lot and improvements at all times, whether the Lot is improved or not. Prior to, and during, the improvement of a Lot, the Owner of the Lot shall keep any grass and weeds neatly mowed, and shall not permit the accumulation of trash, rubbish or other unsightly articles. Following completion of the improvements upon any Lot, each Owner shall maintain and care for all such

improvements and all trees, foliage, plants and lawns on the Lot, and shall otherwise keep the Lot and all improvements thereon in good condition and repair and in conformity with the general character and quality of properties in the immediate area, such maintenance and repair to include, but not be limited to: (a) the replacement of worn and/or rotted components, (b) the regular painting of all painted exterior surfaces, (c) the maintenance, repair and replacement of roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, drives, parking areas and other exterior portions of the improvements to maintain an attractive appearance, and (d) regular mowing and edging of lawn and grass areas. Furthermore, an Owner whose Lot lies within any drainage easements dedicated to the City of Wylie, or as otherwise dedicated on the Plat, shall be required to maintain such areas so that, at a minimum, positive surface drainage is maintained within such areas at all times. Upon failure of any Owner to maintain a Lot owned by him in the manner prescribed herein, the Declarant or the Association, or either of them, at its option and discretion, but without any obligation to do so, and only after seven (7) days written notice to such Owner to comply herewith (except in an emergency situation, in which case immediate action without notice may be undertaken), may enter upon such Owner's Lot and undertake to maintain and care for such Lot to the condition required hereunder and the Owner thereof shall be obligated, when presented with an itemized statement, to reimburse Declarant and/or the Association for the cost of such work within ten days after presentment of such statement, which amount shall be considered a Special Member Assessment hereunder.

Section 2. Enforcement. Enforcement of these covenants and restrictions shall be by a proceeding initiated by a person or persons owning any Lot in the Property, by the Association, when directed by the Board, or by the County of Collin against any person or persons violating or attempting to violate any covenant or restriction contained herein, either to restrain or enjoin violation or to recover damages for the violation or both or to enforce any lien created by this instrument. The Association, and each of its Board members, shall have an election and right, but not an obligation or duty, to enforce these covenants and restrictions by a proceeding or proceedings at law or in equity. Failure by the Association or any party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Further, and with respect to any litigation brought against the Board, the Committee or any of its members or representatives arising out of any action, failure to act, or performance or non-performance of duties imposed hereby, such members or representatives so sued shall be entitled to recover their reasonable attorneys' fees from the person or entity bringing such action against it or them, unless the Board, the Committee or its members or representatives shall specifically be adjudicated liable to such claimant.

Section 3. Imposition of Violation Fines.

(a) In the event that any person fails to cure (or fails to commence and proceed with diligence to completion) the work necessary to cure any violation of the covenants and restrictions contained herein or any rules and regulations promulgated by the Association after proper notice thereof within ten (10) days after receipt of written notice from the Board or its agents designating the particular violation, the Board shall have the power and authority to impose upon that person a reasonable fine (the "Violation Fine"), not to exceed Five Hundred and No/100 Dollars (\$500.00). If, after the imposition of the Violation Fine, the violation has not been cured or the person has still not commenced the work necessary to cure such violation, the Board shall have the power and authority, upon ten (10) days written notice, to impose another Violation Fine which shall also not exceed Five Hundred and No/100 Dollars (\$500.00). There shall be no limit to the number or the aggregate amount of Violation Fines which may be levied against a person for the same violation. The Violation Fines, together with interest at the highest lawful rate per annum and any costs of collection, including attorneys' fees, shall be a continuing lien upon the Lot against which such Violation Fine is made and shall be considered a Special Member Assessment under Section 4 of Article II hereof.

(b) Upon notification of a violation of the Declaration or any rules or regulations, the Board of Directors will issue written notice to the Owner of such violation as provided by this Section 3, including a copy of this Section 3.

(c) Whenever an Owner, upon curing a violation of the Declaration or any rules or regulations after receiving written notice thereof as described in (b) above, receives written notice for the second time detailing a separate violation of the same provision of the Declaration or any rules or regulations, within eighteen (18) months from the date the Owner received the first written notice, such second written notice will also have a copy of this Section 3 attached.

(d) If a subsequent and separate violation of the same restriction or covenant or the same rule or regulation by the same Owner is noted, that being the third separate violation within eighteen (18) months from the date the Owner received the first written notice, then the Owner will automatically be assessed a Violation Fine in an amount not to exceed Five Hundred and No/100 Dollars (\$500.00) as provided and authorized by this Section 3 without the necessity of providing the Owner with the written notice requesting corrective action described in Section 3(a)-(c) above.

(e) The Board of Directors is hereby granted the authority to promulgate policies and procedures which will provide greater detail in establishing the notice of violation and enforcement procedures to be followed in handling violations of the covenants and restrictions.

Section 4. Term and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless seventy-five percent (75%) of the votes outstanding shall have voted to terminate the covenants and restrictions of this Declaration and prior approval has been obtained from the Town of Wylie upon the expiration of the initial twenty-five (25) year period or any extension thereof, which termination shall be by written instrument signed by seventy-five percent (75%) of the Owners and countersigned by a duly authorized representative of the Town of Wylie and properly recorded in the Collin County, Texas land records. This Declaration may be amended by an instrument signed by Owners constituting not less than sixty-five percent (65%) of the votes of the Association. Any amendment must be recorded. Notwithstanding anything contained herein to the contrary, this Declaration may be amended and/or changed in part as follows:

(a) By Declarant within the four (4) year period following the recordation of this Declaration in the Land Records of Collin County, Texas; or

(b) By Declarant (after the four year period following the date this Declaration was recorded in the Land Records of Collin County, Texas) upon the written consent of no less than fifty-one percent (51%) of the Owners of Lots subject to the Declaration.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, all of which unaffected provisions shall remain in full force and effect.

Section 6. Reserve Right of Declarant. Notwithstanding any other provisions hereof to the contrary, Declarant reserves the right (upon application and request of the Owner of any Lot) to waive, vary or amend (by appropriate letter to that effect addressed and delivered to such applicant Owner by Declarant) the application of any of these covenants and restrictions to such Lot if, in the sole discretion of Declarant, such