

V240449

RECEIVED

AUG 23 2001

SOWELL & COMPANY

DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS  
FOR  
WESTBROOK LAKES

*Lee*

08/15/01 101634218 V240449 \$61.00

STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 7<sup>th</sup> day of August, 2001 by SOWELL PROPERTY PARTNERS-WESTBROOK LAKES, L.P., a Texas limited partnership (hereinafter sometimes referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the land within Westbrook Lakes, Section 1, a subdivision of land in Harris County, Texas (the "Subdivision"), according to the plat thereof recorded under Film Code Number 485074, in the Map Records of Harris County, Texas (all of such land so owned and the improvements now or hereafter situated thereon being hereinafter referred to as the "Property"); and

WHEREAS, it is the desire and intention of Declarant to restrict said Property according to a common plan as to use, permissible construction, and common amenities so that all land within the Property shall be benefited and each successive owner of all or a part of said land shall be benefited by preserving the values and the character of said land; and

WHEREAS, Declarant desires to take advantage of the particular geographical features of the Property and proposes to establish a preeminent residential environment which is dependent upon and in furtherance of aesthetic considerations in order to create a residential community having common areas, facilities and landscaping, and to provide for the maintenance, repair, operation and improvement of same; and, to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, to be binding upon each owner of a lot or lots within the Property, and which restrictions, covenants and conditions will also comply with the requirements of local governmental authorities and the zoning and subdivision ordinances and regulations of Harris County, Texas, and the City of Houston (to the extent of its extraterritorial jurisdiction); and

WHEREAS, Declarant has deemed it desirable, and in the best interests of the residents, owners, and future residents and owners of the Property, for the efficient preservation of the values and amenities in the Property and the maintenance, repair, operation and improvement of the common areas, facilities and landscaping, to create an entity to which would be delegated and assigned the powers of maintaining and administering same and enforcing these restrictions, covenants, easements, charges and liens, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant will cause to be incorporated the Westbrook Lakes Homeowner Association, a Texas non-profit corporation, and will designate it as such entity; and

NOW, THEREFORE, Declarant, for and in consideration of, and expressly for the benefit of, and to bind, its successors in interest, does hereby agree and declare that the Property, including such additions thereto as may hereafter be made pursuant to Article I, Section 3 hereof, shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens

543-107-1797

*Book*

*W*

hereinafter set forth which shall run with the land and shall be binding upon all parties having any right, title, or interest in or to the Property, or any part thereof, and their heirs, successors, representatives and assigns. The covenants, conditions, restrictions, easements, charges and liens hereinafter set forth are covenants running with the land at law as well as in equity. This Declaration supplants and replaces in its entirety the Declaration of Residential Restrictions dated November 21, 2000, recorded at Clerk's File No. V235777, Official Real Property Records of Harris County, Texas, as it pertains to the Property.

## ARTICLE I - GENERAL PROVISIONS

Section 1. Definitions. The following words, when used in this Declaration, unless the context shall prohibit, shall have the following meanings:

a. "Association" shall mean and refer to the Westbrook Lakes Homeowner Association, Inc., a Texas non-profit corporation, which will have the power, duty and responsibility of maintaining and administering the Common Areas, Common Facilities, Common Personality, Detention/Drainage Areas, and all Landscaping in the Common Areas and the Detention/Drainage Areas, and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing the assessments and charges hereinafter prescribed.

b. "A-Lots" shall mean and refer to those Lots generally 65 feet wide or greater, or comparable thereto, and specifically the following Lots as shown on the Recorded Plat (hereinafter defined): Lots 1 through 18 (inclusive), Block 2; Lots 1 through 33 (inclusive), Block 3; and Lots 1 through 24 (inclusive), Block 7.

c. "B-Lots" shall mean and refer to those Lots generally 55 feet wide or comparable thereto, and specifically the following Lots as shown on the Recorded Plat: Lots 1 through 46 (inclusive), Block 4; and Lots 1 through 25 (inclusive), Block 5.

d. "Builder" shall mean and refer to any person or entity undertaking the construction of a single-family residence on a Lot for the purpose of selling same for profit.

e. "Common Areas" shall mean and refer to areas of land owned or leased by the Association, and easement areas for walls or fences, entryways, access or walkways and other purposes benefitting the Members, including any improvements and Landscaping located thereon, intended, used and designated for the common use, enjoyment and benefit of the Members of the Association. Initially, the Common Areas shall consist of (1) Reserve "A" (Restricted to Drainage); (2) Reserve "B" (Restricted to Landscape/Open Space); (3) Reserve "D" (Restricted to Landscape/Open Space); (4) Reserve "F" (Restricted to Drainage); and (5) Reserve "G" (Restricted to Recreation Purposes), each as shown on the Recorded Plat.

f. "Common Facilities" shall mean and refer to any recreational buildings and appurtenances, fountains, entry improvements and Landscaping, walls, fences, security facilities, parking areas, irrigation systems, lighting facilities, flagpoles, identification markers, playground and appurtenances, swimming pool, and the like, owned, leased, or installed and maintained in a Common Area or in a public right-of-way by the Association in fulfilling its duties and for the benefit of all Members of the Association.

g. "Common Personality" shall mean and refer to any and all items of personal property owned or leased by the Association for the benefit of all Members or used by the Association in fulfilling its functions and carrying out its duties and purposes hereunder.

h. "Declarant" shall mean and refer to Sowell Property Partners-Westbrook Lakes, L.P., and its successors and assigns, provided that an assign is designated in writing by Sowell Property Partners- Westbrook Lakes, L.P. to be as an assign of all or part of the rights of Declarant.

i. "Detention/Drainage Areas" shall mean and refer to those areas of land, along with the facilities and improvements thereon, within or outside of the Property that are designed and/or used to hold or convey storm water runoff from the Property or to otherwise accommodate the drainage requirements of the Property. Initially, the Detention/Drainage Areas shall consist of Reserve "C" (Restricted to Drainage/Detention) as shown on the Recorded Plat. The Association shall maintain and operate said Reserve "C" and any drainage improvements and facilities situated thereon or appurtenant thereto, notwithstanding that fee simple title to said Reserve "C" may be held by a municipal utility district or similar governmental entity.

j. "Landscaping" shall mean and refer to growing plants, including grass, plantings, vines, ground cover, trees, hedges, shrubs, flowers and the like.

k. "Lot" shall mean and refer to any parcel, plot, or tract of land identified by a lot and block number as shown upon any recorded subdivision map, plat, replat, or revision of the Property, as said recorded subdivision maps or plats may be amended and revised from time to time.

l. "Member" shall mean and refer to each Owner of a Lot or an undivided interest therein, who shall be a Member of the Association as provided in Article II hereof.

m. "Occupant" shall mean and refer to any person occupying or otherwise using a Lot and/or any house or dwelling situated on such Lot (including lessees).

n. "Owner" shall mean and refer to the owner of record (including Declarant), whether one or more persons or entities, of a fee simple title to any Lot that is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

o. "Property" shall mean and refer to the real property (including improvements) described in Section 2 of this Article I, and additions thereto, as are subjected to this Declaration or any Supplementary Declaration under the provisions of Section 3 of this Article I.

p. "Recorded Plat" shall mean and refer to the recorded plat of the Subdivision, incorporating any amendments thereto or replats thereof.

q. "Reserve "C" Lots" shall mean and refer to those Lots generally adjacent to Reserve "C" (as shown on the Recorded Plat), and specifically the following Lots, as shown on the Recorded Plat: Lots 17, 26, and 27, Block 3; and Lots 10, 11, and 20, Block 4.

r. "Reserve "G" Lots" shall mean and refer to those Lots generally adjacent to Reserve "G" (as shown on the Recorded Plat), and specifically the following Lots, as shown on the Recorded Plat: Lots 1 and 16, Block 3; and Lots 21 and 46, Block 4.

s. "Supplementary Declaration" shall mean and refer to an amendment or supplement to this Declaration executed or consented to by Declarant or by the requisite number of owners, if applicable, which subjects additional property to this Declaration and/or imposes expressly or by reference additional restrictions and obligations on the land described therein.

Section 2. Property Subject to Declaration. The real property covered by this Declaration is all of the real property described on Exhibit "A" attached hereto and incorporated herein by reference, which property has been subdivided as Westbrook Lakes, Section 1, a subdivision in Harris County, Texas, according to the Recorded Plat thereof. All of the Property and any right, title or interest therein shall be owned, held, leased, sold, transferred and/or conveyed by Declarant, and any subsequent owner of all or any part thereof, subject to this Declaration and the covenants, restrictions, conditions, easements, charges and liens set forth herein. The covenants, restrictions, conditions, easements, charges and liens herein set forth are covenants running with the land at law as well as in equity, and shall constitute a general plan for the benefit of and be enforceable by all present and future Owners of any Lot or Lots in the Property and their heirs, personal representatives, successors and assigns, as well as by Declarant and the Association.

Section 3. Additional Property Subject to Declaration. Additional property may be added to, or made subject to this Declaration and the covenants, restrictions, conditions, easements, charges and liens set forth herein, in the following manner:

a. Additional property may be annexed by Supplemental Declaration into the jurisdiction of the Association with the consent of two-thirds (2/3rds) of the total eligible votes of the Members of the Association voting in person or by proxy at a meeting called for such purposes; provided, however, additional phases or sections of Westbrook Lakes or any of the property described on Exhibit "B" attached hereto may be annexed by Declarant without such approval by the Members or their mortgagees. The Owners of Lots in such annexed property shall be entitled to the use and benefit of all Common Areas, provided that the Lots in such annexed property shall be impressed with and subject to assessments by the Association as herein specified on a uniform, per Lot basis.

b. Merger and Consolidation. Upon a merger or consolidation of the Association with another non-profit corporation organized for the same purposes, the Association's properties, rights, and obligations may be transferred to the surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions and restrictions established by this Declaration, together with the covenants, conditions and restrictions applicable to the properties of the other association as one scheme. However, such merger or consolidation shall not effect any revocation, change or addition to the covenants established by this Declaration and no merger or consolidation shall be permitted except with the consent of the holders of two-thirds (2/3rds) of the total eligible votes of each class of Members of the Association voting in person or by proxy at a meeting called for such purpose.

c. Dissolution. The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3rds) of the total eligible votes of each class of Members voting in person or by proxy at a meeting called for such purpose. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization devoted to such similar purposes.

## ARTICLE II - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Each and every person, persons, or legal entity who shall own any Lot in the Property, shall automatically be, and must remain, a Member of the Association. Such membership shall be appurtenant to each Lot and may not be severed from or held separately therefrom. PROVIDED, that any

person or entity who holds such an interest merely as security for the performance of any obligation shall not be a Member.

Section 2. Classes of Members. The Association shall have two classes of membership:

a. Class A Member. Class A Members shall be all those persons or legal entities who own a Lot with the exception of Declarant. After the Conversion Date (hereinafter defined), Declarant shall also become a Class A Member to the extent that Declarant is the Owner of one or more Lots. When two or more persons or entities hold undivided interests in any Lot, all such persons or entities shall be Class A Members, and the vote for such part of the Property owned by such Members shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to each Lot in which such Members own undivided interests.

b. Class B Member. The Class B Member shall be Declarant or its successor or assign. The Class B membership of Declarant shall cease and become converted to Class A membership upon the occurrence of the earlier of the following (the "Conversion Date"):

- i. At January 1, 2020; or
- ii. When the total votes of the Class A Members equals the total votes of the Class B Member; or
- iii. Such earlier date as may be established by Declarant in a written instrument recorded by Declarant in the Official Public Records of Real Property of Harris County, Texas.

Section 3. Voting Rights. The Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. Prior to the Conversion Date, the Class B Member shall be entitled to four (4) votes for each Lot it owns. From and after the Conversion Date, the Class B Member (as a converted Class A Member) shall be entitled to one (1) vote for each Lot in which it holds the interest required for Association membership. As stated hereinabove, where more than one person or entity holds such interest in any Lot, all such persons shall be Members, and the vote for such Members shall be exercised as the several parties shall determine among themselves.

Section 4. Termination of Membership. The membership of a person or entity in the Association shall terminate automatically whenever such person or entity ceases to be an Owner, except that such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Association or this Declaration during the period of ownership, nor impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

### ARTICLE III - ASSESSMENTS

Section 1. Covenants for Assessments. The Declarant, for each Lot owned by it within the Property (being all Lots within the Property), hereby covenants to pay, and each purchaser of any such Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay, to the Association the following assessments (to the extent that any assessment pertains to a Lot owned by the Declarant or that purchaser and becomes due and payable on a date prior to or during the time that the Declarant or that purchaser is the Owner of that Lot): (1) Regular Annual Assessments (as specified in Section 3 of this Article III); (2) Special Assessments (as specified in Section 4 of this Article III), and (3) Special Member Assessments (as specified in Section 5 of

this Article III), all of such assessments to be fixed, established and collected as hereinafter provided.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of protecting and promoting the comfort, collective mutual enjoyment, health, safety, and welfare of the Owners of the Property, or any part thereof, and for carrying out the purposes of the Association as stated in its Articles of Incorporation and this Declaration. The judgment of the Board of Directors of the Association in determining the functions to be performed by the Association, in determining the amount of Regular Annual Assessments, Special Assessments and Special Member Assessments, and in the expenditure of funds shall be final and conclusive so long as its judgment is exercised in good faith.

Section 3. Regular Annual Assessments. Each Owner of a Lot shall pay Regular Annual Assessments (herein so called) to the Association, subject to the provisions of Section 3.d hereof.

a. Purpose. Regular Annual Assessments shall be levied upon each Lot to provide funds for the use and benefit of the Owners of the Property. Regular Annual Assessments may be used to finance in particular, but not by way of limitation, the following:

- i. Operation, maintenance, repair, and improvement of the Common Areas, the Detention/Drainage Areas, the Common Facilities, and the Common Personality, including funding of appropriate reserves for future repair, replacement and improvement of same;
- ii. Payment of taxes and premiums for insurance coverage in connection with the Common Areas, Detention/Drainage Areas, Common Facilities, and Common Personality and any other property owned by the Association;
- iii. Paying the cost of labor, equipment (including expense of leasing any equipment), material, and any associated management or supervisory services and fees required for management and supervision of the Common Areas, Detention/Drainage Areas, Common Facilities, and Common Personality;
- iv. Paying the cost and fees of a manager or firm retained to carry out the duties of the Association or to manage the affairs and property of the Association;
- v. Paying the cost of Association liability insurance;
- vi. Maintaining or replacing any Landscaping in the Common Areas, Common Facilities, and the Detention/Drainage Areas;
- vii. Designing, purchasing and installing any improvements to the Common Areas, Common Facilities, and the Detention/Drainage Areas;
- viii. Mowing and routine maintenance of the Common Areas;
- ix. Mowing and routine maintenance of the Detention/Drainage Areas unless such maintenance work is performed by a municipal utility district or other governmental entity;
- x. Removing debris from the Common Areas and the Detention/Drainage Areas;

- xi. Repairing all areas of erosion within the Detention/Drainage Areas;
- xii. Lighting, improving and maintaining streets (to the extent such service is not provided by a governmental entity), alleyways, sidewalks, and paths in the Property (including furnishing electrical service for the street lights);
- xiii. Collecting and disposing of trash, garbage, ashes, rubbish and other similar materials;
- xiv. Payment of legal fees and expenses incurred to collect assessments, enforce this Declaration, and defend the Association;
- xv. Employing policemen or watchmen and/or a security service;
- xvi. Carrying out the duties of the Board of Directors of the Association; and
- xvii. Carrying out such purposes of the Association as generally benefit all Members of the Association.

b. Basis for Assessment. Subject to the provisions of subsection (d) below, Regular Annual Assessments shall be levied equally against each Lot by the Board of Directors of the Association on an annual basis. After consideration of current costs and future needs of the Association, the Board shall fix the Regular Annual Assessment at any amount not in excess of the hereinafter stated maximum.

c. Maximum Annual Assessment. Until December 31, 2001, the maximum Regular Annual Assessment shall be \$700.00 for each Lot. From and after January 1, 2002, the maximum Regular Annual Assessment may be increased each year not more than fifteen percent (15%) (such percentage may be cumulative from year to year) above the maximum assessment for the previous year by the Board of Directors of the Association without a vote of the Members. The maximum Regular Annual Assessment may be increased above such amount with the approval of a majority of the total eligible votes of each class of the membership of the Association by Members voting in person or by proxy at a meeting called for such purpose.

d. Lots Owned by Declarant. Lots owned by the Declarant and any Builder shall be subject to the obligation of payment of Regular Annual Assessments at the rate of 50% of the amount assessed against the Lots owned by the Class A Members (other than Declarant and any Builder).

Section 4. Special Assessments. In addition to the Regular Annual Assessments authorized by Section 3 hereof, the Association may, by vote of its members as set out in Section 6 hereof in any year or years, levy Special Assessments (herein so called).

- a. Purpose. Special Assessments may be levied for the following purposes:
  - i. Defraying the cost of any new construction or reconstruction, unexpected repair or extraordinary maintenance, or replacement of capital improvements for and within the Detention/Drainage Areas, Common Areas, Common Facilities, and Common Personalty, including the necessary fixtures and personal property related thereto;
  - ii. Responding to unusual or emergency needs of the Association as a whole as may be expected to occur from time to time;

543-111-1111

iii. Satisfying the obligation and responsibility of replenishing all or part of any escrow funds held by any other third party which have been withdrawn to pay for obligations incurred or assumed by the Association under agreements with such third party and/or any other governmental authorities;

iv. Indemnifying a director, officer, agent or employee of the Association pursuant to the indemnification provision of the Articles of Incorporation and Bylaws of the Association or this Declaration;

v. Carrying out any other purposes that benefit the Association as a whole as stated in its Articles of Incorporation, Bylaws or as stated herein.

b. Basis for Assessment. Special Assessments shall be allocated and prorated among the Owners at the date each such Special Assessment is levied in the same manner as Regular Annual Assessments are allocated and prorated among the Lots pursuant to Section 3 of this Article.

Section 5. Special Member Assessments. In addition to the Regular Annual Assessments and any Special Assessments authorized in this Article III, the Association, by vote of its Board of Directors, may levy a Special Member Assessment (herein so called) in accordance with, and as provided in Section 2 of Article VII hereof and the Bylaws of the Association, as such Bylaws presently exist or are subsequently modified or amended.

Section 6. Vote Required for Special Assessments. The Special Assessments authorized by Section 4 hereof must be approved by two-thirds (2/3rds) of the total eligible votes of each class of the membership of the Association by Members voting in person or by proxy at a meeting duly called for such purpose, a written notice of which shall be given to all Members at least fifteen (15) days in advance and shall set forth the purpose of such meeting.

Section 7. Commencement Date of Annual Assessments. The first Regular Annual Assessment provided for herein shall commence on a date in 2001 fixed by the Board of Directors of the Association and shall continue thereafter from year to year. The assessment for 2001 shall be adjusted according to the number of months remaining in such year and shall be due and payable thirty (30) days after notice of assessment is sent to the Owners of the Lots.

Section 8. Due Date of Assessments. On or before December 31 of each year commencing with 2001, the Board of Directors shall fix the Regular Annual Assessment for the following calendar year, which shall become due and payable on January 1 of such year and delinquent if not paid by March 1 of such year. If the Board of Directors fails, for any reason, to fix the Regular Annual Assessment on or before December 31 of any year, then the Regular Annual Assessment for the prior year shall be deemed to have been fixed for the following year until such time as the Board of Directors acts as to such following year. The due date of any Special Assessments under Section 4 hereof or of any Special Member Assessment under Section 5 hereof shall be fixed in the resolution authorizing such assessment.

Section 9. Owner's Personal Obligation for Payment of Assessments. The Regular Annual Assessments and all Special Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot covered by such assessments. No Owner may, for any reason, exempt himself from liability for such assessments. In the event that any assessment or installment thereof is not paid when due, then the unpaid amount of any such assessment or installment thereof shall become delinquent and shall, together with interest thereon as herein provided and costs of collection thereof, be a continuing personal



obligation and debt of the non-paying Owner secured by the continuing lien imposed by this Declaration on the Lot, including all improvements thereon, to which such assessment or installment thereof pertains.

The obligation of any Owner to pay any assessment imposed on a Lot during such Owner's period of ownership shall remain such Owner's personal obligation, and a sale or other transfer of title to such Lot shall not release such former Owner from said liability notwithstanding an assumption of liability by the purchaser or transferee. The lien imposed by this Declaration for any unpaid assessments shall be unaffected by any sale or transfer of full or partial ownership interests in a Lot, or portion thereof, and shall continue in full force and effect.

The unpaid amount of any assessment shall bear interest from its due date at eighteen percent (18%) per annum or the maximum legal rate of interest then prevailing, whichever is lesser. In addition, the Board of Directors of the Association may elect to retain the services of an attorney of its choice for the purposes of collecting any unpaid assessment and interest charges thereon, and/or to foreclose the lien imposed by this Declaration against the property subject thereto and/or to pursue any other legal or equitable remedy which the association may have and there shall be added to the amount of the unpaid assessment and interest charges therein, any and all collection costs incurred by the Association, whether judicial or non-judicial, and including, but not limited to, reasonable attorney's fees and costs of legal suit.

Section 10. Assessment Lien and Foreclosure. Declarant hereby imposes upon each and every Lot of land within the Property a continuing lien enforceable by the Association to secure the payment to the Association of the Regular Annual Assessments, Special Assessments and Special Member Assessments (together with interest and the cost of collection, including reasonable attorneys' fees as provided in Section 9 hereof) attributable to the Owner of that Lot of land in the Property (the "Association's Lien"). Each Owner of each Lot, by acceptance of the deed therefor and whether or not it shall be so expressed in such deed, is deemed to covenant and agree to accept such Lot subject to the Association's Lien. Each Owner of each Lot, by acceptance of the deed therefor and whether or not it shall be so expressed in such deed, hereby expressly vests in the Board of Directors of the Association, or its agents, the right and power to bring all actions against each such Owner personally for the collection of all such assessments as a debt and to enforce the aforesaid Association's Lien by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to §51.002 of the Texas Property Code, as same presently exists or as it is subsequently amended; and each such Owner hereby expressly grants to the Board of Directors of the Association a power of sale in connection with said Association's Lien. The Board of Directors of the Association may designate a trustee in writing from time to time to post or cause to be posted the required notices and to conduct such non-judicial foreclosure sale. The trustee may be changed at any time and from time to time by an instrument in writing signed by the President or a Vice-President of the Association and attested by the Secretary or any Assistant Secretary of the Association and filed for record in the official public records of real property of Harris County, Texas. The initial designation of a trustee by the Board of Directors of the Association shall be by an instrument in writing that is executed and filed in the same manner as an instrument changing the designated trustee. In any foreclosure proceedings, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred by the Association, and the Association shall have the right and power to bid on the property being foreclosed. The aforesaid Association's Lien shall be superior to all other liens and charges against the Property, except only for ad valorem tax liens and all sums unpaid on a first mortgage lien or first deed of trust lien of records, securing in either instance sums borrowed for the improvement and/or purchase of the property in question, to which said liens the Association's Lien shall be subordinate and inferior. Provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a foreclosure sale (whether public or private) of any such Lot pursuant to the terms and conditions of any such mortgage or deed of trust. Any foreclosure and sale of a Lot pursuant to said superior liens shall not relieve any such Lot's Owner of personal liability for the sums owing under this Article nor the new

Owner thereof from liability for the amount of any assessments thereafter becoming due nor from the continuing lien imposed hereby securing payment of any such subsequent assessments. The Association, acting through its Board of Directors, shall have the power to subordinate the aforesaid Association's Lien to any other lien.

Section 11. Common Areas Exempt. The Common Areas, Detention/Drainage Areas, and any common properties of any other association which may merge or consolidate with the Association, and any common properties contained or defined within a Supplementary Declaration filed as provided in Article I, Section 3 of this Declaration, and all portions of the Property owned by or otherwise dedicated to any political subdivision, shall be exempted from the assessments and lien created herein.

Section 12. Certificate of Payment. The Board of Directors of the Association shall, upon the request of an Owner and the payment of a reasonable charge established by said Board, cause to be furnished to any such Owner liable for assessments, a certificate in writing signed by an officer of the Association setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence of the payment of any assessments therein stated to have been paid.

#### ARTICLE IV - ARCHITECTURAL REVIEW COMMITTEE

Section 1. Designation of Committee. The Association shall have an Architectural Review Committee appointed by the Board of Directors, which shall consist of three (3) members who shall be natural persons, and who need not be Members of the Association. Members of the Board of Directors may also be members of the Architectural Review Committee. Until the Conversion Date, the appointment of the members of the Architectural Review Committee must be approved by Declarant and any and all members of such committee may be removed by the Board of Directors and/or the Declarant without cause. After the Conversion Date, the Board of Directors shall have the exclusive right and power at any time and from time to time to appoint, remove and fill vacancies on the Architectural Review Committee. Initially, the address of the Architectural Review Committee is 1601 Elm Street, Suite 300, Dallas, Texas 75201.

Section 2. Function of Architectural Review Committee. No Improvement, as that term is hereinafter defined, shall be erected, constructed, placed, altered (by addition or deletion), maintained or permitted to remain on any Lot until plans and specifications, in such form and detail as the Architectural Review Committee may deem necessary, shall have been submitted to and approved in writing by such committee. The Architectural Review Committee shall have the power to employ professional consultants to assist it in discharging its duties. The decision of the Architectural Review Committee shall be final, conclusive, and binding upon the applicant.

Section 3. Content of Plans and Specifications. The plans and specifications required by the Architectural Review Committee to be submitted and approved may include, without limitation, the following:

a. A plat showing the location of all improvements, structures, walks, patios, driveways, fences and walls. Existing and finished grades shall be shown at Lot corners and at corners of proposed improvements. Lot drainage provisions shall be indicated as well as cut and fill details if any applicable change in the Lot contours is contemplated.

b. Exterior elevations.

c. Exterior materials, colors, textures, and shapes.

- d. Structural design.
- e. Landscaping plan, including walkways, fences and walls, elevation changes, watering systems, vegetation and ground cover.
- f. Parking area and driveway plan.
- g. Screening, including size, location and method.

The Architectural Review Committee may, at its discretion, grant the approval required by this Article IV for one set of plans and specifications submitted by a Builder for Improvements on multiple Lots, and such approval shall be effective for each Lot on which such Improvements are constructed.

Section 4. Definition of "Improvement". Improvement shall mean and include all buildings, any roofed structures, waterfront structures, parking areas, paved areas, fences, walls, hedges, mass planting, poles, fountains, statuarics, driveways, ponds, swimming pools, tennis and other sport courts, changes in any exterior color or shape, and any new exterior construction or exterior improvement which may not be included in any of the foregoing. It does not include garden shrub or tree replacements or any other replacement or repair of any magnitude which does not change exterior colors or exterior appearances. It does include both original improvements and all later changes and improvements.

Section 5. Basis of Approval. Approval of plans and specifications shall be based, among other things, on adequacy of site dimensions, structural design, conformity and harmony of external design and of location with neighboring structures and sites, relation of finished grades and elevations to that of neighboring sites, and conformity to both the specific and general intent of the protective covenants and restrictions of Article V hereof.

Section 6. Failure of the Committee to Act. If the Architectural Review Committee fails to approve or disapprove such plans and specifications or to reject them as being inadequate within ten (10) business days after submittal thereof, it shall be conclusively presumed that such committee has approved such plans and specifications, EXCEPT that the Architectural Review Committee has no right or power, either by action or failure to act, to waive or grant any variance from the requirements of the protective covenants, conditions, and restrictions contained in Article V hereof, except as specifically provided therein.

Section 7. Limitation of Liability. The Architectural Review Committee has no liability or obligation whatsoever in connection with any plans and/or specifications and no responsibility for the adequacy thereof or for the construction of any improvements contemplated by any such plans and/or specifications. The Architectural Review Committee has no duty to inspect any improvements; and, if the Architectural Review Committee should inspect any improvements, the Architectural Review Committee shall have no liability or obligation to any party arising out of such inspection. The Architectural Review Committee expressly shall have no liability or responsibility for defects in or omissions from any plans and/or specifications or for defects in or omissions from the construction of any improvements. Notwithstanding any covenant, condition or term contained in this Declaration or provision of the Bylaws of the Association to the contrary, the Architectural Review Committee shall not have any liability to any Owner arising or resulting from any act or omission of the Architectural Review Committee taken or omitted pursuant to this Declaration or the Bylaws of the Association. Each Owner, by accepting a conveyance of any Lot or of any portion of the Property, shall be deemed conclusively to have unconditionally and irrevocably waived all claims against the Architectural Review Committee arising or resulting from acts or omissions pursuant to this Declaration or the Bylaws of the Association.

54307-1887

## ARTICLE V - COVENANTS AND RESTRICTIONS

Section 1. Covenants Applicable. The following provisions shall be applicable to any and all construction, improvement, alteration, or addition to the Lots.

a. Each Lot shall be used exclusively for single-family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, hospital, sanatorium or doctor's office, or other multi-family dwelling shall be erected, placed, permitted or maintained on any Lot, or on any part thereof. No improvement or structure whatsoever, other than a first-class private dwelling house, patio walls, swimming pool, and customary outbuildings, garage, servants' quarters, waterfront structure, or guest house, may be erected, placed, or maintained on any Lot. For purposes of this Declaration, "single-family residential" means no more than one dwelling unit shall be constructed on any Lot.

b. No Lot shall be further divided or subdivided, nor shall the boundary line of any Lot be modified after a subdivision plat including such Lot has been approved and filed of record; provided, however, Declarant shall be permitted to subdivide or change the boundary line of any Lot owned by the Declarant.

c. No sign of any kind shall be displayed to the public view on or from any part of any Lot, except signs temporarily used by Declarant or any Owner, of not more than five square feet, advertising the Lot for sale or rent, or signs of architects and builders during the period of construction and sale of improvements on any Lot.

d. The total floor area of any single-story dwelling constructed on any A-Lot, exclusive of open porches and garages, shall not be less than 1,800 square feet. The total floor area of any single-story dwelling constructed on any B-Lot, exclusive of open porches and garages, shall not be less than 1,600 square feet.

e. The total floor area of any two-story dwelling constructed on any Lot, whether A-Lot or B-Lot, exclusive of open porches and garages, shall not be less than 2,000 square feet, and the floor area of the second floor of any such two-story dwelling, exclusive of open porches and garages, shall not exceed 60% of the total floor area of such two-story dwelling, unless a variance from this restriction is specifically approved in writing by the Architectural Review Committee.

f. The exterior walls of any one-story dwelling constructed on a Lot, exclusive of doors and windows, shall be 75% masonry, stucco, stone or brick construction, and the exterior walls of any two-story dwelling constructed on a Lot, exclusive of doors and windows, shall be 60% masonry, stucco, stone or brick construction, unless a variance from this restriction is specifically approved in writing by the Architectural Review Committee. Provided, however, no variance from this restriction may be approved for exterior walls that face a street. Those exterior walls of a one-story structure that face a street shall be no less than 75% masonry, stucco, stone or brick construction and those exterior walls of a two-story structure that face a street shall be no less than 60% masonry, stucco, stone or brick construction. All chimneys constructed or erected on a Lot as a component of the front or side of any dwelling, which front or side faces a street, shall be constructed of masonry, stucco, stone, or brick, unless a variance from this restriction is specifically approved in writing by the Architectural Review Committee.

g. Fences. For purposes of this subsection, the "front face" of a fence is the side on which the support posts are not visible. The "back face" of a fence is the side of a fence on which the support

posts are visible.

(i) General. Except as provided in subsections (ii), (iii), (iv), (v), and (vi) below, all Lots in the Subdivision shall have a fence constructed on the side and rear lot lines of each Lot, which fences shall 1) be six feet (6') in height, 2) be made of cedar, 3) have two (2) horizontal rails, 4) have six-inch (6") wide pickets with no separations between pickets, 4) be constructed in seven-foot (7') sections, 5) be installed along the side lot lines from the rear lot line at least to the point that is parallel to the rear elevation of the residence, but no further than the point that is parallel to the front elevation of the residence, and 6) have faces alternating by section. No chain link fence or fences shall be situated, erected, constructed, or permitted to remain upon any Lot or any portion thereof. All fences required to be constructed on any Lot hereunder shall be constructed prior to the issuance of a certificate of occupancy for the residence constructed on such Lot.

(ii) Reserve "C" Lots. Each Reserve "C" Lot shall have a black wrought iron fence constructed on the side and rear lot lines of such Lot that are adjacent to said Reserve "C" (to the extent permitted by subparagraph (ii) below), which fence shall (x) be four feet (4') in height with the pickets spaced on four-inch centers, and (y) otherwise comply with the requirements or restrictions of this subparagraph g.

(iii) Reserve "G" Lots. Each Reserve "G" Lot shall have a solid wood fence constructed on the side and rear lot lines of such Lot that are adjacent to said Reserve "G" (to the extent permitted by subparagraph (i) above), which fence shall (x) be six feet (6') in height, and (y) otherwise comply with the requirements or restrictions of this subparagraph g. If the fence constructed on any such Lot is one-sided rather than two-sided, the back face of the fence shall face the Lot rather than Reserve "G."

(iv) Corner Lots. The fences constructed along the side lot line adjacent to the street shall be constructed with the front face facing the street.

(v) Lots 10 through 24, Block 7. The fences constructed along the rear lot lines of Lots 10 through 24, Block 7, shall be constructed with the front face facing north and northwest (i.e., away from the front of the Lot rather than toward the front of the Lot).

(vi) Community Fence. Declarant intends to construct a wood fence along the rear lot lines of Lots 17 through 25 (inclusive), Block 5, and Lots 1 through 9 (inclusive), Block 7, as shown on the Recorded Plat (the "Community Fence"), which shall be maintained by the Association. So long as the Community Fence is constructed and maintained, no Builder or Owner shall be permitted to construct a fence of any kind whatsoever along the rear lot lines of said Lots. If no Community Fence is constructed, or if such fence ceases to be maintained by the Association, then any replacement therefor shall be constructed with the front face facing west (i.e., away from the front of the Lot rather than toward the front of the Lot).

h. All roofs constructed upon any dwelling and/or other structures constructed, erected, or located upon any Lot shall be constructed with a minimum pitch of 6" by 12" and shall be constructed of architectural dimensional shingles of a quality equal to or exceeding 25-year warranty in "earth-tone" colors, unless a variance from this restriction is specifically approved in writing by the Architectural Review Committee.

i. No animals, livestock, or poultry shall be raised, bred, or kept upon any Lot, or portion

thereof, except that no more than a total of three (3) dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, and provided that they do not create a nuisance.

j. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

k. No Lot shall be used or maintained as a dumping ground for rubbish, nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators, containers, or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. No compost shall be permitted upon any Lot.

l. Facilities and lines for hanging, drying, or airing clothing or household fabrics shall not be permitted, except inside an enclosed structure.

m. No building material of any kind or character shall be placed or stored upon a Lot until the Owner is ready to commence improvements and then such materials shall be placed within the property lines of the Lot upon which the improvements are to be erected, and shall not be placed in the street. No stumps, trees, underbrush, or any refuse of any kind, nor scrap material from the improvements being erected on any Lot shall be placed on any adjoining Lots or streets. All such material, if not disposed of immediately, must remain on the Lot on which construction work is in progress, and at the completion of such improvements, such material must be immediately removed from the Property.

n. No trailer, tent, shack, garage, or any structure of a temporary character shall at any time be erected or used on any Lot as a residence or business, either temporarily or permanently, except during actual construction of a building being erected thereon, and then such temporary structure must be on the Lot on which construction is in progress and not on adjoining Lots, streets, or easements, and at completion of construction, the temporary structure must be removed immediately. No such temporary structure shall be used for residential purposes during construction. No garage or outbuilding shall ever be used as a residence or business, either temporarily or permanently. Notwithstanding the foregoing, nothing contained herein shall prohibit the location of a trailer, mobile home, or other temporary structure on any part of the Property for use temporarily as a sales office for homes erected or to be erected by builders or developers. The size, location, and period of occupancy of such temporary sales offices shall be subject to the prior written approval of the Architectural Review Committee, which approval may be given or withheld at such Committee's sole discretion, and if withheld, then the location and use of such trailer, mobile home or temporary structure for a sales office at the requested location shall be prohibited. Upon the expiration of the period of occupancy permitted by the Architectural Review Committee for such temporary sales office, such trailer, mobile home or temporary structure shall be removed immediately.

o. Any motor boat, house boat, sail boat or other waterborne vehicle, a motor home, trailer, or any other vehicle (except traditional automobiles used for day-to-day transportation) shall be maintained, stored or kept on any Lot only in an enclosed garage or screened from view behind a solid fence located behind the building line.

p. No detached two-story garage shall be constructed or erected upon any Lot except as follows: On any Lot that is not an Open Space Lot and does not abut Reserve "B" or Reserve "D", a two-story detached garage may be constructed that meets the following requirements: (x) has an "A-Frame"

style roof line, the lowest point of which is not more than nine (9) feet above the ground, and (y) is specifically approved in writing by the Architectural Review Committee as a variance from this restriction. Any detached one-story garage must be at the rear of the residence.

q. Except in the case of a detached garage situated behind the rear of the residence, no garage shall be constructed or erected upon any A-Lot with the entrance to such garage facing the street that such Lot faces as shown on the Recorded Plat, unless a variance from this restriction is specifically approved in writing by the Architectural Review Committee.

q. All dwellings or residences constructed or erected upon any Lot shall face the road or street that the Lot abuts as shown on the Recorded Plat. If a Lot abuts more than one street, the residence constructed thereon shall face the street designated for the address of said Lot.

r. Lots Abutting Jackrabbit Road. The residence constructed on each Lot that abuts both Jackrabbit Road and another road or roads shall be constructed with the front of the residence facing a street other than Jackrabbit Road and with the driveway access from a street other than Jackrabbit Road. There shall be no direct access from any Lot to Jackrabbit Road. This provision also applies to any Lot that is separated from Jackrabbit Road only by Reserve "B" or Reserve "D" as shown on the Recorded Plat.

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

Section 2 Landscaping. All Lots shall be landscaped, and such landscaping shall:

a. Be required on all Lots contemporaneously with completion of other improvements, but in no event later than 30 days after the first occupancy or completion of a residential structure, whichever shall first occur, unless a longer period is approved in writing by the Architectural Review Committee;

b. Conform to a landscaping plan approved by the Architectural Review Committee pursuant to Article IV hereof. Such approval may be limited to landscaping plans which:

i. Provide for a minimum of two (2) live oak trees of at least 4" caliper each in the front yard of an A-Lot; provide for a minimum of two (2) live oak trees of at least 3" caliper in the front yard of a B-Lot; and provide for the planting of shrubs of a minimum size of five (5) gallons each along the entire front of the residence (on either an A-Lot or B-Lot).

ii. Do not obstruct sight lines at street or driveway intersections;

iii. Preserve existing trees to the extent practical; and

iv. Permit reasonable access to public and private utility lines and easements for installation and repair.

c. The front yard of each Lot as well as the side yard of each corner Lot shall be completely sodded to the street curb by the Builder upon the completion of the residential structure.

d. No antenna, tower or satellite dish shall be erected on any Lot for any purpose without prior written approval of the Architectural Review Committee. The Architectural Review Committee may,

from time to time, provide written guidelines for the erection of antennas and satellite dishes upon the Lots.

e. Any and all lines and/or wires for communication or for transmission of sound or electrical current, not within a building, shall be constructed or placed and maintained underground.

Section 3. Front Setback. The following building front setback requirements of this Section 3 shall supplement (not replace or supersede) the building lines and building setback requirements shown on the Recorded Plat and any amendments thereto or any requirements of the Code of Ordinances of the City of Houston (such that if the Recorded Plat, the Code of Ordinances and this Section provide different distances for front setback, the lengthier distance must be complied with).

a. No residence shall be constructed on any Lot nearer than (as is applicable) (i) fifteen (15) feet from the right-of-way of the cul-de-sac servicing such Lot or (ii) twenty (20) feet from the right-of-way of the street (not a cul-de-sac) servicing such Lot.

b. If a residence is to include a front-entry garage with the garage doors facing the street or cul-de-sac servicing such Lot, no residence shall be constructed nearer than (as is applicable) (i) twenty (20) feet from the right-of-way of the cul-de-sac servicing such Lot or (ii) twenty-five (25) feet from the right-of-way of the street (not a cul-de-sac) servicing such Lot; provided that, this paragraph (b) shall not apply to any such Lot containing a detached garage located behind the rear line of the residence; provided further that, this paragraph (b) shall not apply to any such Lot on which is constructed a residence having a front porch that is covered by an overhanging roof with a depth of four (4) feet or more and a width representing thirty (30) percent or more of the front elevation of such residence.

c. If the front setback requirement is determined to be twenty-five feet (25') pursuant to the foregoing Section 3.b, so long as the garage portion of the residential structure is no nearer than twenty-five feet (25') from the right-of-way line, then the residence portion (i.e., the portion not including the garage) may be no nearer than twenty feet (20') from the right-of-way line.

Section 4. Side Setbacks. No part of a residence or garage shall be located on a Lot nearer than five (5) feet to a side Lot line; provided, however, notwithstanding the foregoing, a detached garage may be located no nearer than three (3) feet to a side Lot line.

Section 5. Underground Electric Service. An underground electric distribution system will be installed in the Subdivision. This electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has, either by designation on the plats of the Subdivision or by separate instrument(s), granted necessary easements to the electric company providing of the installation, maintenance, and operation of its electric distribution system and has also granted to each Owner of a Lot reciprocal easements providing for access to the area occupied by and centered on the service wires of the various Owners to permit installation, repair and maintenance of each Owner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit shall, at his



own cost, furnish, install, own, and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character, and exclusively of the type known as single-phase, 120/240 volt, three-wire, 60-cycle, alternating current.

## ARTICLE VI - RESERVATION AND GRANT OF EASEMENTS

Section 1. Utilities. Easements for installation, construction, reconstruction, patrolling, inspection, maintenance, repair, removal, and/or addition of utility systems or facilities and for ingress and egress to or from and upon such utility easements are reserved by Declarant as shown on the plats of the Property, the provisions of said plats pertaining to the use of land situated within such utility easements being hereby referred to and incorporated herein for all purposes. Full right of ingress and egress shall be had by Declarant, any municipal authority which provides utilities to the Property, at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. All claims for damages, if any, arising out of the construction, reconstruction, patrolling, inspection, maintenance, repair removal and/or addition of utilities or on account of temporary or other inconvenience caused thereby, against the Declarant, or any utility company or municipality, or any of its agents or servants, are hereby waived by the Owners.

Section 2. Wall Easement. There is hereby reserved and created a perpetual right and easement for the benefit of the Association, its successors and assigns, upon, over and across the rear five feet (5') of Lots 17 through 25 (inclusive), Block 5, and Lots 1 through 9 (inclusive), Block 7, as shown on the Recorded Plat, for the purposes of constructing, maintaining, repairing, replacing and reconstructing Landscaping and any wall or fence constructed along Reserve "B" or Reserve "D"; together with the right to enter upon any such Lot as may be reasonably necessary to construct, maintain, repair, replace or reconstruct such Landscaping and such wall or fence. Nothing contained in this Article VI shall be construed to obligate the Association or Declarant to construct any such wall or fence.

Section 3. Universal Easement. Each Lot and its Owner is hereby declared to have an easement, and the same is hereby granted to Declarant, over all adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering error, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachment, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted, and there shall be easements for the maintenance of said encroachments so long as they shall exist. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being served and shall pass with each conveyance of said Lot.

## ARTICLE VII - MAINTENANCE

Section 1. Owner's Duty of Maintenance. The Owners and Occupants of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that part of the Property so owned or occupied including buildings, improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- a. Prompt removal of all litter, trash, refuse, and wastes.
- b. Lawn mowing.
- c. Tree and shrub pruning.
- d. Watering.
- e. Keeping lawn and garden areas alive, free of weeds, and attractive.
- f. Keeping parking areas and driveways in good repair.
- g. Complying with all government health and policy requirements.
- h. Repair of exterior damages to buildings and improvements and repainting of buildings and improvements when necessary.

Section 2. Enforcement. If, in the opinion of the Association (acting through its Board of Directors), any such Owner or Occupant has failed in any of the foregoing duties or responsibilities, then the Association (acting through its Board of Directors) may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and Occupants of any Lot on which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such Owners or Occupants shall fail to reimburse the Association within ten (10) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of said Owners and Occupants jointly and severally, and the Association may levy a Special Member Assessment in accordance with this Declaration and the Bylaws of the Association, as such Bylaws presently exist or are subsequently modified or amended, which Special Member Assessment is secured by the lien imposed by Article III, Section 10 of this Declaration, and is subject to foreclosure as is provided therein.

## ARTICLE VIII - COMMON PROPERTIES

Section 1. Easements of Enjoyment. Subject to the provisions of Section 3 hereof, every Member of the Association shall have a non-exclusive right of easement of enjoyment in and to the Common Areas.

Section 2. Title to Common Areas. Except as otherwise provided herein, Declarant shall convey to the Association fee simple title to the Common Areas owned in fee by Declarant, and the Association shall

be responsible for their operation, repair and maintenance in accordance with this Declaration.

Section 3      Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

a.      The right of the Association to establish rules and regulations governing the Members' use and enjoyment of the Common Areas, and to suspend the enjoyment rights of any Member for any reasonable period of time for any infraction of such rules and regulations.

b.      The right of the Association to sell, convey or dedicate to the appropriate governmental authority, the Common Areas, or any part thereof, provided such sale, conveyance or dedication is approved by a majority of the total eligible votes of each class of the Members of the Association, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance of the meeting and shall set forth the purpose of the meeting.

c.      The right of the Association to borrow money for the purpose of improving, maintaining, or repairing the Detention/Drainage Areas, the Common Areas and/or Common Facilities, or any part thereof, and to mortgage the Common Areas, Common Facilities, or any part thereof, provided the mortgaging of the Common Areas is approved by a majority of the total eligible votes of each class of Members of the Association voting in person or by proxy, at a meeting duly called for such purpose.

d.      The right of the Association to take such steps as are reasonably necessary to protect the Common Areas and/or Common Facilities, or any part thereof, against foreclosure.

e.      The right of the Association to suspend the voting rights and right to use the Common Facilities of any Member for any period during which any assessment or other amount owed by the Member to the Association remains unpaid or during which such Member is in violation of any of the provisions of this Declaration.

f.      The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities which may be a part of the Common Areas.

g.      The right of any third party fee owner of any of the Common Areas used or maintained by the Association.

#### ARTICLE IX - MISCELLANEOUS PROVISIONS

Section 1      Duration. This Declaration and the covenants, restrictions, conditions, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and every Owner of any part of the Property, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded, and continuing through and including December 31, 2025, after which time said covenants, restrictions, conditions, charges, and liens shall be automatically extended for successive periods of five (5) years unless a change (the word "change" including additions, deletions or modifications thereto, in whole or in part) is approved by a majority of the total eligible votes of the Members of the Association voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance of the meeting and shall set forth the purpose of such meeting.

Section 2      Amendment. This Declaration may be amended or terminated at any time by a majority of the total eligible votes of each class of membership of the Association voting in person or by proxy at a

meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance of the meeting and shall set forth the purpose of such meeting, provided that Declarant must consent thereto if such amendment or termination is to be effective prior to January 1, 2007. Any such amendment or termination shall become effective when an instrument is filed for record in the Official Public Records of Real Property of Harris County, Texas, with the signatures of the requisite number of the Owners of the Property (and the signature of Declarant if prior to January 1, 2007).

Section 3. Enforcement. The Association, every Owner of any part of the Property, Declarant, and their respective legal representatives, heirs, successors and assigns, shall have the right (but not the duty) to enforce this Declaration and the covenants, restrictions, conditions, charges and liens contained herein. Enforcement of the covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure by the Association or any Owner or Declarant to enforce any such covenant, condition, restriction, charge or lien shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 5. Notice. Whenever written notice to the Owners (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owners appearing on the records of the Association (and as furnished to the Board of Directors by such Owners). If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail, postage prepaid, property addressed, whether received by the addressee or not.

Section 6. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 7. Number of Gender of Words. Whenever used in this Declaration, the singular number shall include the plural where appropriate, and vice versa; words of any gender shall include each other gender, where appropriate.

Section 8. Assignment. Declarant shall have the right to assign and/or delegate its rights, privileges, duties and obligations hereunder.

Section 9. Address of Declarant. The mailing address of Declarant is 1601 Elm Street, Suite 300, Dallas, Texas 75201.

Section 10. Insurance. The Board of Directors of the Association shall obtain insurance (the premiums for which shall be a common expense payable from property assessments) for all the Common Areas and the Common Facilities, as follows (such insurance to be in amounts designated by the Board of Directors unless an amount is specified in this Declaration):

- a. Insurance on all insurable improvements against loss or damage by fire and all other risks

insured by standard extended coverage policies in use in the State of Texas, with such endorsements as the Board of Directors deems advisable, in amounts sufficient to prevent the Association from being a co-insurer within the terms of such policies, but in any event in an amount not less than the full replacement cost thereof. The full replacement cost of such improvements shall be determined annually by the Board of Directors which may obtain an appraisal in making such determination, the cost of which shall be a common expense payable from property assessments.

b. Comprehensive general liability insurance against claims for bodily injury or death (minimum coverage of \$300,000) and property damage (minimum coverage of \$100,000) suffered by the public or any Owner, the family, agent, employee or invitee of any Owner, occurring in, on or about the Common Areas, and at least \$1,000,000.00 in "umbrella" coverage. Any policy obtained pursuant to this subsection (b) shall contain a cross-liability endorsement whereby the rights of a named insured shall not prejudice his, her or their action or actions against another named insured, and shall contain a "severability of interest" type of endorsement precluding the insurer from denying a claim of an Owner or the Association because of the negligent acts of other Owners or the Association.

c. Such other insurance in such reasonable amounts as the Board of Directors shall deem desirable, including without limitation, director's and officer's liability insurance for the directors and officers of the Association (including former directors and officers) against any liability asserted against any such party, or incurred by such party in such capacity, or arising out of such party's status as a director or officer or as a former director or officer; and fidelity bonds for any management company retained by the Board of Directors.

d. All insurance provided for herein shall be effected with responsible insurers authorized to do business in the State of Texas. All such policies of insurance shall name as insured the Association. All insurance policies shall be held with insurance companies with an AM Best & Company rating of not less than an A + 9 rating.

e. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas, Detention/Drainage Areas, or the Common Facilities covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.

f. Any damage or destruction to the Common Areas, Detention/Drainage Areas, or Common Facilities shall be repaired or reconstructed unless Members holding a majority vote of each class of voting membership in the Association decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided however, that such extension shall not exceed sixty (60) days.

g. In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Areas, Detention/Drainage Areas or Common Facilities shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Common Areas by the Association in a neat and attractive condition.

Section 11. Bylaws of the Association. This Declaration contemplates and refers to Bylaws of the Association. No rights of Members created or described herein, and no provision hereof, shall impair, invalidate or limit the power and authority (which it expressly hereby has) of the Bylaws to (i) determine or set standards for determining which votes of Members of the Association are "eligible votes," (ii) set quorum requirements for the effective conducting of meetings of Members, the Board or any committee, (iii) authorize actions to be taken by Members, the Board or any committee by written consent of appropriate percentages, even without a meeting or prior notice, (iv) set meeting and notice requirements for subject matters addressed in the Bylaws, and (v) otherwise to limit, enhance, impair and modify the voting rights and procedures provided for in this Declaration or under the Texas Non Profit Corporation Act; provided that, the Bylaws cannot (i) alter the prescribed percentage of votes necessary to amend a specific clause of this Declaration (subject to the determination of quorum and of "eligible votes"), (ii) alter the prescribed percentage of affirmative votes required for action to be taken under and as prescribed by this Declaration (subject to the determination of quorum and of "eligible votes") or (iii) remove, revoke or modify any right or privilege of the Declarant hereunder.

a. To the extent that the Bylaws provide for a method of delivery (and the effectiveness thereof) of a notice to a Member, a director or the Association for a purpose stated in the Bylaws, and such method or effectiveness is inconsistent or in conflict with the methods of delivery (or the effectiveness thereof) allowed or prescribed by this Declaration, the provisions of the Bylaws shall be controlling.

b. The Board of Directors shall adopt the initial Bylaws of the Association. Those Bylaws may be amended by Declarant on its own motion at any time prior to the Conversion Date. Alternatively, those Bylaws may be amended by (i) the vote of Members holding a majority of the total eligible votes of the Class "A" Members voting in person or by proxy at a meeting duly called for such purpose, and (ii) the assent of the Class "B" Member, so long as such membership exists.

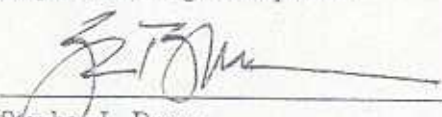
Section 12. Articles of the Association. Declarant shall cause the initial Articles of Incorporation of the Association to be prepared and filed. After Articles are approved and adopted by the Board of Directors, those Articles may be amended by (a) the vote of Members holding two-thirds of the total eligible votes of the Class "A" Members voting in person or by proxy at a meeting duly called for such purpose, and (b) the assent of the Class "B" Member, so long as such membership exists.

EXECUTED as of the date set forth above.

SOWELL PROPERTY PARTNERS-WESTBROOK LAKES, L.P.,  
a Texas limited partnership

By: SOWELL PROPERTY COMPANY-WESTBROOK LAKES, INC.,  
a Texas corporation, its general partner

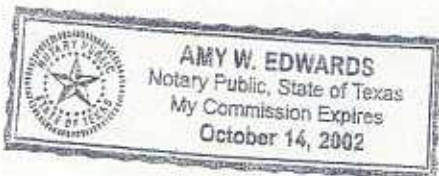
By:

  
Stephen L. Brown  
President

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

This instrument was acknowledged before me on the 7 day of August, 2001, by Stephen L. Brown, President of SOWELL PROPERTY COMPANY-WESTBROOK LAKES, INC., a Texas corporation, in its capacity as sole general partner of SOWELL PROPERTY PARTNERS-WESTBROOK LAKES, L.P., a Texas limited partnership.

Amy W Edwards  
Notary Public, State of Texas



Amy W Edwards  
Name printed or typed  
My Commission Expires: 10/14/01

APPROVAL OF LIENHOLDER:

FIRST CONTINENTAL INVESTMENT CO., LTD., a Texas limited partnership

By: FCC MANAGEMENT CO., LTD., a Texas limited liability company, its sole General Partner

By: John M. Bonner  
Name: John M. Bonner  
Title: Manager

FILE FOR RECORD  
8:00 AM

AUG 15 2001

Carol L. Hayden  
County Clerk, Harris County, Texas

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on the 6th day of August, 2001, by John M. Bonner, Manager of FCC MANAGEMENT CO., LTD., a Texas limited liability company, on behalf of said limited liability company in its capacity as the sole General Partner of FIRST CONTINENTAL INVESTMENT CO., LTD., a Texas limited partnership.

Kathryn Evans  
Notary Public, State of Texas  
Kathryn Evans  
Name printed or typed  
My Commission Expires: 04/01/2002



After recording  
return to: Kathy Powell  
1601 Elm St.  
Suite 300  
Dallas, TX 75201

543-87-1819