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DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR THE  
ENCLAVE AT MILL POINT TOWNHOME ASSOCIATION, INC.

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144-10-1677

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR THE  
ENCLAVE AT MILL POINT TOWNHOME ASSOCIATION, INC.**

THIS DECLARATION is made on the date hereinafter set forth by MHI PARTNERSHIP, LTD., a Texas limited partnership, (hereinafter sometimes called "Declarant"):

WITNESSETH:

WHEREAS, Declarant is the owner of a portion of the real property described in Article II, Section 1, of this Declaration; and

WHEREAS, the Woodlands Land Development Company, L.P. is the owner of balance of the real property described in Article II, Section 1, of this Declaration, which real property Declarant will be acquiring; and

WHEREAS, for purposes of this Declaration it shall be deemed as if Declarant is the owner of all of the real property described in Article II, Section 1 of this Declaration; and

WHEREAS, the real property so described is subject to the Covenants, Restrictions, Easements, Charges and Liens of The Woodlands dated October 4, 1993 and recorded in the Official Public Records of Real Property Montgomery County, Texas under File No. 9353446 (the "Woodlands CCR's") the real property having been annexed thereto by Annexation Agreement dated as of January 4, 2002, and recorded in the Official Public Records of Real Property of Montgomery County, Texas under File No. 2002-001175; and

WHEREAS, in addition to the Woodlands CCR's, Declarant desires to subject the real property described in Article II, Section 1, hereof to the provisions of this Declaration to create a residential community of single-family attached housing; and

NOW, THEREFORE, Declarant (with the consent of The Woodlands as hereinafter defined) hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, and any other real property annexed herein subsequent to the date hereof, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

ARTICLE I.  
Definitions

Unless the context shall prohibit, certain words used in this Declaration shall have the definitional meaning set forth below:

(a) "Association" shall mean and refer to the Enclave at Mill Point Townhome Association, Inc., a nonprofit Texas corporation, its successors and assigns.

(b) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(c) "By-Laws" shall refer to the By-Laws of the Enclave at Mill Point Townhome Association, Inc.

(d) "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(e) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A", attached hereto, and any and all real property and interests therein added to the Community subsequent to the date hereof by annexation pursuant to Article XI, hereof.

(f) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association.

(g) "Declarant" shall mean and refer to MHI Partnership, Ltd., a Texas limited partnership, and any successors-in-title and assigns of MHI Partnership, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", attached hereto (or subsequently annexed herein and made a part hereof), and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto, (and subsequently annexed hereto and made a part hereof) which is hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

(h) "Majority" means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

(i) "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(j) "Mortgagee" shall mean the holder of a Mortgage.

(k) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Unit located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(l) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(m) "Unit" shall mean a portion of the Community intended for ownership and use as an individual townhome (both the real property and the improvements located thereon) and as permitted in this Declaration and as shown on the plat for Enclave at Mill Point, or amendments thereto, recorded in the Official Public Records of Real Property of Montgomery County, Texas, for the real property described on Exhibit "A" attached hereto, and any such other portion of the Community on any plat or plats recorded in the Official Public Records of Real Property of Montgomery County, Texas, if and when annexed into the Association and made subject to this Declaration. The ownership of each Unit shall include, and there shall pass with each Unit as an appurtenance thereto, whether or not separately described, membership in the Association. Each Unit shall for all purposes constitute real property which may be owned in fee simple and which may be conveyed, transferred, or encumbered in the same manner as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his or her Unit, subject to this Declaration. All air conditioning apparatus serving only one Unit shall be a part of the Unit so served. Each Owner shall have the right to lateral and subjacent support for his or her Unit, and such right shall pass with the Unit.

(n) "The Woodlands" shall mean the Woodlands Land Development Company, L.P., a Texas limited partnership, which is the declarant under the Woodlands CCR's.

## ARTICLE II.

### Property Subject to This Declaration; Prior Covenants

Section 1. Property Hereby Subjected to This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "A", attached hereto and by reference made a part hereof, and any additional real property annexed into the Association and made subject to the terms of this Declaration.

Section 2. Prior Covenants. This Declaration is expressly made subject to the Woodlands CCR's. In the event of any conflict between the provisions hereof and the Woodlands CCR's, the Woodlands CCR's shall control. Specifically, but not by way of limitation, the rights herein established, imposed and created shall in all respects be inferior and subordinate to the easements and rights-of-way granted and/or reserved to the Woodlands Corporation, its designees, successors and assigns, under and by virtue of Article XI of the Woodlands CCR's, and no use or operation shall be conducted within the Common Property that would in any manner interfere with, obstruct, alter, affect or diminish the rights of the Woodlands Corporation, its designees, successors and assigns, pursuant to Article XI of the Woodlands CCR's.

### ARTICLE III.

#### Association Membership and Voting Rights

Section 1. Membership. The Declarant and every person who is the record owner of a fee or undivided fee interest in any Unit that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Unit. In the event of multiple Owners of a Unit, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Unit. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Unit owned. No member or spouse of any member shall be entitled to vote or exercise any other right or privilege of membership if such member is delinquent with respect to any assessments due hereunder.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" members shall be all Owners, with the exception of the Declarant, whether such Owner owns a Unit located in the real property described on Exhibit "A" attached hereto or whether such Owner owns a Unit located in other parcels of real property which is (or are) subsequently annexed into and is made subject to the terms of this Declaration. Class "A" members shall be entitled to one (1) vote for each Unit owned, regardless of where such Unit is located. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one Person seeks to exercise it.

(b) Class "B". The Class "B" member shall be the Declarant. The Class "B" member shall be entitled to three (3) votes for each Unit owned. The Class "B" membership shall



terminate and become converted to Class "A" membership upon the happening of the earlier of the following:

- (i) when 100% of the Units have been sold to Class "A" members;
- (ii) October 1, 2022; or
- (iii) when, in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class "B" member shall be deemed to be a Class "A" member entitled to one (1) vote for each Unit it owns, if any.

(c) At such time that additional property is annexed into the Association, if any, the Class B Membership of the Declarant, shall, if it had previously ceased due to one of the conditions listed above in (i), (ii) or (iii) be reinstated and shall apply to all Lots owned by Declarant in the newly annexed portion of the Community, as well as to all Lots owned by Declarant in all other areas of the Community. Such reinstatement is subject to further cessation in accordance with the limitation set forth in the preceding paragraphs (i), (ii) and (iii) of this Article, whichever occurs first. However, upon reinstatement due to annexation of additional property into the Community, the period of time set forth in the preceding paragraph (ii) of this Article shall be extended to the extent necessary such that in all circumstances it extends for a period no shorter than ten (10) years from the date of each such recorded annexation (i.e. Supplemental Declaration).

Section 3. Management. The Association shall be incorporated as a nonprofit corporation. The Association shall be managed by the Board of Directors pursuant to the procedures set forth in the Articles of Incorporation and Bylaws of the Association, subject to this Declaration.

Section 4. Duties and Powers of the Board. Through the Board, the Association shall have the following powers and duties:

- (a) To adopt rules and regulations to implement this Declaration and the By-Laws.
- (b) To enforce this Declaration, the By-Laws, its rules and regulations.
- (c) Declare the office of a member of the Board of Directors (which was not appointed by the Declarant) to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors or such member is delinquent in the payment of an assessment for more than twenty (20) days, as set forth in the By-Laws.
- (d) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

(e) Delegate responsibility to, and contract with, a management company, for collection of the assessments and enforcement of this Declaration, the Bylaws and the rules and regulations of the Association.

(f) Delegate responsibility to, and contract with, a management company for the operation, management and maintenance of the Common Property and the Association from time to time, if the Board so elects.

(g) Delegate responsibility to, and contract with, a management company for whatever maintenance and other obligations, if any, that the Association from time to time undertakes.

(h) To enter into such contracts and agreements concerning the Community as the Board deems reasonably necessary or appropriate to maintain and operate the Community in accordance with the Declaration, and to assume any contracts and agreements concerning the Community entered into by the Declarant, including without limitation, the right to enter into agreements with adjoining or nearby landowners or governmental entities on matters of maintenance, trash pick-up, repair, administration, security, traffic, streets or other matters of mutual interest.

(i) To take any and all actions, and to cause to be taken any and all actions which are the responsibility of the Association and the Board pursuant to this Declaration and the By-Laws, including but not limited to duties relating to electing Directors, creating budgets, delegating power, establishing and collecting assessments, the enforcement of all of the obligations of the Owners, to receive complaints and make determinations about violations of this Declaration, the By-Laws, the rules and regulations, the holding of annual and special meetings, the management and maintenance of Common Property, the performance of all maintenance obligations of the Association hereunder and the payment of all costs and expenses to be paid by the Association hereunder.

#### ARTICLE IV. Assessments

Section 1. Purpose of Assessments. The assessments provided for herein shall be used for the general purpose of promoting the recreation, common benefit, and enjoyment of all of the Owners and occupants of Units, including the maintenance of real and personal property such as the Common Property (including but not limited to any gazebo, park, park improvements and/or benches, and landscaping), as well as the private streets, all as may be more specifically authorized from time to time by the Board of Directors. The judgment of the Board of Directors as to expenditures shall be final and conclusive so long as its judgment is exercised in good faith.

Section 2. Creation of the Vendor's Lien and Personal Obligation for Assessments. Each Owner of any Unit, 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: (a) annual assessments or charges assessed

against said Unit; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration, including, but not limited to, reimbursement assessments and/or reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing vendor's lien upon the Unit against which each assessment is made and the owner of each Unit hereby covenants and agrees to grant and does hereby grant to whoever is serving as Trustee (as appointed by the Board), the continuing vendor's lien on each Unit to secure all such sums set forth herein. Declarant and/or the Association, shall have the right to appoint one or more successor or substitute trustees to act instead of the trustee named herein without other formality than the recordation in the Official Public Records Real Property of Montgomery County, Texas of a written designation of such trustee. Such substitute or successor trustee shall have all authority hereby conferred on the Trustee herein named. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, which is secured by the continuing vendor's lien, shall also be the personal obligation of the person who was the Owner of such Unit at the time the assessment fell due. The Association shall have the right to apply all amounts collected to all sums owing in the order it determines, in its sole discretion. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Unit, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

Assessments shall be paid at a uniform rate per Unit, regardless of where such Unit is located, in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, which may be changed from time to time, the assessment shall be paid in monthly installments.

Common Property shall be exempt from assessments.

Section 3. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year (including but not limited to the private streets and permanent access easements), which may provide for an increase over the previous year's budget and which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. It is anticipated that there will be a reserve account set up for street maintenance. Such budget may also take into account annexations which the Board reasonably believes may occur in the coming year. The Board shall cause the budget and the assessments to be levied against each Unit for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. After the expiration of the Class B membership, the budget and the assessment shall become effective unless disapproved at a meeting by at least 2/3 of the Owners. Notwithstanding the foregoing, however, in the event the membership disapproves the

proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4A. Special Assessments - Contributions at Purchase. In addition to the other assessments authorized herein, the Association may levy special assessments in any year for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement or such other addition upon the Common Property, and/or for the operation of the Common Property. So long as the total amount of special assessments allocable to each Unit does not exceed 50% of the then annual assessment in any one fiscal year, the Board may impose the special assessment without the prior approval or consent of the membership. Any special assessment which would cause the amount of special assessments allocable to any Unit to exceed this limitation after the expiration of the Class "B" Membership shall be effective only if approved by at least majority of the Class "A" members at a meeting of Members at which a quorum is present. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. The proper purpose of a special assessment hereunder shall be any purpose determined by the Board of Directors to be in the best interests of the Association.

Each Owner of a Unit other than Declarant (whether one or more Persons and regardless of whether such Owner holds the fee interest singly or jointly), at the time it purchases a Unit from the previous owner (i.e. at every sale beginning with the first Owner to purchase the Unit from Declarant), shall be obligated to make a \$500.00 contribution to the Association, which funds shall be used to defray operating costs and other expenses of the Association, including but not limited to street maintenance, as the Board shall determine in its sole discretion.

Section 4B. Reimbursement Assessments. Subject to the provisions hereof, the Association may levy a reimbursement assessment against any Owner (or Unit) if the failure of the Owner (or Unit), or of the Owner's family, guests or tenants to comply with this Deed, the By-laws, or any rules applicable to such Owner and Unit shall have resulted in the expenditure of funds or the determination that funds will be expended by the Association to cause such compliance. The amount of such reimbursement assessment shall be due and payable to the Association ten (10) days after notice to the Owner (or Unit) that such reimbursement assessment is owing.

Section 5. Lien for Assessments. All sums assessed against any Unit pursuant to this Declaration, together with late charges, interest, costs and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a vendor's lien on such Unit in favor of the Association as provided herein. Such lien shall be superior to all other liens and encumbrances on such Unit, except for (a) liens of ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Official Public Records of Real Property of Montgomery County, Texas, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument; or (c) liens for assessments created pursuant to the Woodlands CCR's.

All other persons acquiring liens or encumbrances on any Unit after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in the amount of \$25.00, which amount may be amended as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a vendor's lien, as herein provided, shall attach and, in addition, the vendor's lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. Any sums collected may be applied to amounts due in the order determined by the Board, in its sole discretion. In the event that any assessment or other sum remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amount and/or take action to foreclose its vendor's lien, either by action for judicial foreclosure in the manner prescribed by law or by directing the Trustee to foreclose the vendor's lien by public sale conducted in accordance with the notice, posting and other requirements of the statutes of the State of Texas for the foreclosure of deed of trust liens upon real property. Each Owner, by acceptance of a deed to a Unit or as a party to any other type of a conveyance of a Unit, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The vendor's lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Unit at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit.

In addition to all other remedies of the Association set forth herein, in the event any member is delinquent in the payment of any assessments due pursuant to this Declaration, or shall otherwise be in default hereunder, then by Board action, such member shall not be entitled to exercise the rights and privileges of membership, including but not limited to the right to vote and hold office until such default(s) have been cured. The election by the Association to exercise any of its remedies herein permitted shall not be construed to constitute an election to waive the right to exercise any other remedy available. The Association is hereby authorized by all Owners to use any and all of such remedies as often as may be required to collect payment of all sums secured by a lien hereunder.

Section 7. Date of Commencement of Annual Assessments. The annual assessments procedure provided for herein shall commence on the first day of the month following the conveyance of the first Unit by the Declarant to a Class "A" member and shall be due and payable

in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any specific Unit becomes subject to assessment hereunder shall be the date on which the Unit is conveyed by Declarant to a Class "A" member.

Section 8. Assessments by Declarant.

(a) At the option of Declarant, the Declarant shall not be required to pay the annual assessment for Units that it owns, as long as the Declarant is attempting to sell those Units. However, in such event and only for as long as the Class "B" Membership exists, Declarant will contribute such sums as are needed by the Association to meet its operating expenses, should there be insufficient sums from the amounts being collected. For purposes of this paragraph, operating expenses are hereby defined as normal and customary day-to-day expenses specifically excluding any capital reserve contributions and/or capital expenditures. Should Declarant ever begin leasing its unsold Units, other than short-term leases as part of a sales transaction, then Declarant shall commence paying annual assessments as to those leased Units.

(b) Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money, (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

Section 9. Assessment Certificate and Transfer Fee. Upon written request by an Owner, the Association shall within a reasonable period of time, issue to an Owner a written certificate stating that all assessments (including interest and costs), have been paid with respect to any specified Unit, and if all assessments and charges have not been paid, setting forth the amount of such assessments and charges (including interest and costs, if any) due and payable as of the date of the certificate. The Association may make a reasonable charge for the issuance of such certificate; however, there shall be no charge to the Declarant for any such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser or lender on the Unit specified in such certificate. The Association shall have the right to charge any Owner selling or otherwise transferring title to a Unit, a fee which is reasonable compensation, in the opinion of the Board, for the costs incurred by the Association in changing its records to reflect the transfer of ownership; however, there shall be no charge to the Declarant when the Declarant sells a Unit.

ARTICLE V.  
Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair, consistent with the Community-Wide Standard, the Common Property. The Association shall maintain and keep in good repair all improvements located on the Common Property, including but not limited to any paved or concrete walkways, driveways, parking areas and patios, if any, as well as the private streets and permanent access easements. Any paved or concrete walkways, driveways, parking areas and patios located within the boundaries of a Unit shall be the responsibility of the Owner of such Unit. The Association shall also maintain the perimeter fencing placed in the easement reserved in and described in Article X, Section 9 hereof and any street trees placed in the right-of-way.

The Property contains one or more private streets or permanent access easements as shown on any of the plats of the Property that have not been dedicated to or accepted by any city, nor county nor any other government agency as public rights-of-way. Neither the County of Montgomery nor any other government agency has or shall have any obligation to maintain or improve any private street or permanent access easement within the Property. The maintenance and improvement of the private streets or permanent access easements are the sole responsibility of the Association

There are hereby reserved to the Association easements over the Community as necessary to enable the Association to fulfill the Association's maintenance responsibilities described in this Declaration. Except as otherwise provided herein, all costs associated with maintenance, repair and replacement of the Common Property and private streets and permanent access easements and perimeter fencing shall be a common expense to be allocated among the Units as part of the annual assessments.

The Association shall provide exterior maintenance upon Unit improvements as follows: paint, repair, replace, and care for roof surfaces and roof systems, (i.e. shingles and decking only) gutters, downspouts, and, with the exception of patios, decks, entry doors, garage doors, glass and their appurtenant hardware, all exterior building surfaces.

The Association shall also have the authority but not the obligation to perform the following maintenance on the Units:

- repainting of exterior of Units (as needed in the Association's judgment which is anticipated to be approximately every eight 8 years) and repainting of front doors of Units (as needed in the Association's judgment which is anticipated to be every four (4) years);
- to the extent accessible to Association, the maintenance of front yards only, to include mowing, edging, trimming of trees and bushes, weeding of beds, fertilizing and mulching as needed (in the Association's judgment);

- to the extent accessible to Association, clean gutters installed by Declarant;
- installation and maintenance of sprinkler system for the accessible front yards of each Unit (the sprinkler system for each Unit may be separately metered);
- roof repair or replacement;
- collection of normal household rubbish;
- operation of street lights.

The Association intends to initially perform the items listed above and intends to continue the performance of those items; however, the Board may, at some future time, decide to stop performing some or all of these items listed above. Should this occur, then the operating costs of the Association may decrease by the amount it cost the Association to provide such items and the Owners would then bear the responsibility to perform each such item for their respective Units. It is possible that the total cost for each Owner for such items may be higher than the possible decrease in such Owner's annual assessments from the Association. The Board of the Association may also, at some future date, decide to perform other maintenance items for the Units which could result in an increase in annual assessments. By means of illustration and not limitation, the Association shall have the authority, but not the obligation, to hire a contractor to provide monitoring for the security systems installed by Declarant.

The Association will only perform the various items to which it has reasonable access. If reasonable access is blocked or denied, the Association will not perform such items, however the assessments of any Owner whose Unit does not allow reasonable access will not be reduced.

The Association shall have the right but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

**Section 2. Owner's Responsibility.** Except as provided in Section 1, above, all maintenance of the Unit shall be the responsibility of the Owner thereof. Such maintenance shall specifically include, but not be limited to, foundations, yard maintenance, fence repair and maintenance, exterior light fixture and bulb replacement and repair maintenance to the frame of the Unit, including the rafters and frame of the roof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, sewer or air conditioning pipes, lines, ducts, conduits or other apparatus serving the Unit).



All maintenance of the Unit not listed above (or which the Board of the Association later elects not to perform) shall be the responsibility of the Owner thereof.

Specifically the responsibility of the Owner of a Unit shall include, but not be limited to, the following:

- all exterior and interior maintenance of the Unit other than exterior painting;
- replacement of burned out exterior lighting;
- repair and maintenance of all sidewalks and driveways on the Lot;
- purchase, installation, maintenance and replacement of additional landscaping over the original landscaping package installed by Declarant.
- watering of lawns and beds and all landscaping as needed.
- maintenance and replacement of original landscape package installed by Declarant
- removal of dead natural vegetation and trees;
- all pipes, lines, ducts, conduits, or other apparatus which serve the Unit and Lot, (including all gas, electricity, water, sewer or air conditioning pipes, lines, ducts, conduits or other apparatus serving the Unit).
- maintenance of security system in Unit.

Such maintenance shall be performed consistent with this Declaration and the Community Wide Standard established pursuant hereto. In the event that the Board of Directors of the Association determines that (a) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement and shall bill the Owner therefore 110% of such cost and expenses, plus a \$50.00 administrative fee, such bill to be due upon receipt and if not

timely paid, such bill shall become and be deemed to be an a part of the assessment to which such Owner is subject and shall become a lien against the Unit, collectible as herein provided.

Section 3. Party Walls.

(a) General Rules of Law to Apply. Each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who are served by the wall in equal proportions.

(c) Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner the wall serves may restore it, and the other Owner or Owners that the wall serves shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Section, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such owner's successors-in-title.

(f) Foundation, Fences. Common foundations which form a part of the Units and common fences between Units, if any, will be dealt with in the same fashion as party walls, as set forth in this section.

(g) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

ARTICLE VI.  
Use Restrictions and Rules

Section 1. General. The Board of Directors may, from time to time, in its sole discretion and without consent of the members, promulgate, modify, or delete use restrictions and rules and regulations applicable to all of the Units and the Common Property, including but not limited to rules governing traffic and parking on the private streets and permanent access easements, the leasing of Units by the Owners thereof and activities in the Community ("Rules"). Such rules and regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by both the vote of Class "A" members holding a Majority of the total votes in the Association and the vote of the Class "B" member, so long as such membership shall exist. The Rules shall not apply to Declarant or to any property owned by it and shall not be applied in any manner which would prohibit or restrict the development of the Community and/or the development, construction and/or sale of the Units by Declarant.

Section 2. Occupants Bound. All provisions of the Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Unit.

Section 3. Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition of his or her Unit. No Unit shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Unit that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Unit. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

Section 4. Occupancy. Each Unit shall be used as a residence only, except as otherwise herein expressly provided. Each Unit owned by an individual, corporation, limited liability company, partnership, trust or other fiduciary may only be occupied by the following persons and such persons' families and guests: (i) the individual Owner, (ii) an officer, director, stockholder or employee of such corporation or company, (iii) a partner or employee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of a Unit (as described below), as the case may be.

Occupants of leased or subleased Unit will be deemed approved occupants if they occupy the Unit for a period of not less than six (6) months and are the following persons, and such persons' families and guests: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder or

employee of a corporate lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee.

Section 5. Architectural Standards. No existing Unit and/or other improvements on any lots on which a Unit is located shall be modified, enlarged or otherwise altered (including but not limited to change of exterior color scheme), nor shall there be any additional improvements, exterior construction, alteration, addition, or erection of any nature whatsoever commenced or placed upon or permitted to remain any part of the Community, except such as is installed by the Declarant or as is approved in accordance with the Woodlands CCR's and/or this Section. No exterior construction, addition, erection, or alteration which would have the effect of altering the uniform design and color of the Units shall be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the Board or its designee. The Board or its designee may promulgate written guidelines for the exercise of this review.

However, the authority of the Board under this section does not give the Board the authority to review matters arising from the Woodlands CCR's, which is to say that the authority of the Board under this section, is and shall remain subordinate to the authority of the Residential Design Review Committee of the Woodlands.

The Board or its designee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours, to enter upon any Unit to inspect any Unit and any improvements thereon for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In the event the Board or its designee fails to approve or to disapprove such design and location within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community, they do not create any duty to any person. Review and approval of any application pursuant to this Article may be made solely on the basis of aesthetic considerations. The reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, any other Association committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the building materials used, or the action, inaction, integrity, financial condition, or quality of work of any

contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a builder in Texas; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board and its members shall be defended and indemnified by the Association as provided in Article XII, Section 10.

The reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration; or (c) estop the reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 6. Parking. Overnight parking of any vehicles in the street is prohibited. Any campers and/or recreational vehicles and/or boats must be fully enclosed in a garage for overnight parking and/or storage in the Unit. The Board may make other Rules and Regulations with respect to the parking and/or storage of vehicles on Units.

Section 7. Signs. Other than standard size for sale or rent signs, or signs for a security company, no signs, billboards, posters or advertising devices of any kind shall be permitted on any Unit without the prior written consent of the Board. The size, shape and color of any signs must be as set forth in the Rules of the Board or as otherwise approved by the Board. This section shall not apply to the Declarant.

Section 8. No Storage Buildings. No exterior storage building shall be allowed on any Unit without the prior written consent of the Board.

Section 9. Satellite Dishes. Satellite dishes shall, to the extent allowed by law, be limited to those with a diameter of 39" or less.

## ARTICLE VII.

### Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and for all buildings on Units. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism, malicious mischief and flooding (if available) and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Each Owner should obtain insurance to cover the contents of its respective Unit.

The Board shall obtain a general liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). Each Owner should obtain liability insurance for their individually owned Unit(s).

Premiums for all insurance which is the expense of the Association to provide shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefitted parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Texas and holding a rating of XI or better in the Financial Category as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) All policies shall be for the benefit of the Unit Owners and their Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(e) All casualty insurance policies shall have an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Montgomery County, Texas, area.

(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- (iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;
- (iv) that no policy may be canceled, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
- (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, if and to the extent necessary, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds and other insurance deemed prudent by the Board. The amount of fidelity coverage shall be determined in the directors' best business judgment. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

Section 2. Damage and Destruction.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any improvement 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 and location that existed prior to the fire or other casualty.

(b) Repair and Reconstruction. Any damage or destruction to any Unit or Units shall be repaired or reconstructed. Any damage or destruction to any Common Property shall be

repaired or reconstructed unless at least seventy-five percent (75%) of the Class "A" members and the Class "B" member, so long as such membership exists, agree otherwise.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Units owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association; provided that the Owner and Mortgagee of any Unit for which proceeds are received agree to the distribution as their interest may appear.

In the event that it should be determined by the Association in the manner described above that the damage or destruction to the Common Property 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 Property by the Association in a neat and attractive condition.

#### ARTICLE VIII.

##### Condemnation

Section 1. Common Property. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, the Class "B" member (if such membership shall then exist) and at least seventy-five percent (75%) of the Class "A" members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Article VII, Section 2, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Section 2. Units. If the taking includes one or more Units, or any part or parts thereof, whether or not there is included in the taking any part of the Common Property, then the award shall be disbursed and all related matters shall be handled pursuant to and in accordance with the consent of no less than fifty percent (50%) of all Owners expressed in a duly recorded amendment to this Declaration; provided that the consent of the Owner or Owners of the Unit or Units so taken must first be obtained. If such consent cannot be obtained, the funds shall be disbursed as the court may determine.



ARTICLE IX.  
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Units in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number), (therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; or

(b) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Special Provisions. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. Notice to Association. Each Unit Owner other than Declarant shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Unit. Each Unit Owner shall be obligated to furnish the Association any changes to such information within a reasonable time after such changes become effective.

ARTICLE X.  
Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang (as well as an easement for repair and maintenance of any such encroachment and overhang) as between each Unit and such portion or portions of the Common Property adjacent thereto or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or

altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Property or as between adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association. The easements for encroachment and overhang also include and will allow drainage from any overhang on to adjacent Units and/or onto the lots said adjacent Units are located on.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Unit shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Unit, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property and to limit the number of guests of Unit Owners and tenants who may use the Common Property;

(ii) the right of the Association to suspend the voting rights of a Unit Owner and the right of an Owner to use the recreational facilities in the Community, if any, for any period during which any assessment against his Unit which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Unit or Unit Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Unit Owner encumbering any Unit or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Unit or Unit Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Unit Owner encumbering any Unit or other property located within the Community);

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least two-thirds of the votes which the Class "A"

members of the Association present, or represented by proxy, are entitled to cast at a meeting duly called for such purpose and by the Class "B" member of the Association, so long as such membership shall exist;

(v) the right of the Declarant and/or the Association to modify the Common Property as set forth in this Declaration; and

(vi) the right of the Declarant to annex additional real property and the Units located thereon into the Association and made subject to the terms of this Declaration.

(b) Any Unit Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the occupants of any leased Unit.

(c) Restricted Access. All entrance(s) and exit(s) to and from the private streets or permanent access easements in the Property to public street(s) may, at all times be restricted by use of one (1) or more electronic gate(s) or other means (the "Gate"). Owners will be given an access device or code to operate the Gate(s) upon such terms reasonably acceptable to the Association. An Owner may receive no more than one (1) device per occupant vehicle owned and will promptly return the device(s) to the Association upon the occupant no longer occupying any Lot(s).

Section 3. Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easement for Entry. The Association shall have an easement, but not a duty, to enter into any Unit for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Community, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. It is intended that this right of entry shall include (and this right of entry shall include) the right, but not the duty, of the Association to enter a Unit to cure any condition which may increase

the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 5. Construction of Common Property Improvements. Declarant may construct, certain facilities and improvements as part of the Common Property, together with equipment and personalty contained therein, and such other improvements and personalty as Declarant determines, in its sole discretion. Declarant shall be the sole judge of the composition of such facilities and improvements. Prior to the termination of the Class B membership, Declarant shall have the absolute right to, from time to time, in its sole discretion, construct additional improvements and facilities on the Common Property and to remove, add to, modify and change the boundaries, facilities and improvements now or then part of the Common Property. Declarant is not obligated to, nor has it represented that it would, modify or add to the facilities or improvements on the Common Property as they are contemplated as of the date hereof. Declarant is the sole judge of all matters concerning the Common Area until the Class B membership terminates, including the plans, specifications, design, location, completion schedule, materials, size and contents of the facilities and improvements or changes to any of them.

Section 6. Use. The Common Property shall be used and enjoyed by the Owners on a non-exclusive basis in common with other persons, entities and corporations, who may, but are not required to be, members of the Association, entitled to use those portions of the Common Property. Prior to the expiration of the Class B membership, the Declarant, and thereafter the Association, has the right, at any time and all times, and from time to time, to further additionally provide and make the Common Property available to other individuals, persons, firms or corporations, as it deems appropriate. The granting of such rights shall not invalidate this Declaration, reduce or abate any Owner's obligations pursuant to this Declaration, or give any Owner the right to avoid any of the covenants, agreements or obligations to be performed hereunder.

Section 7. Indemnification. The Association and Owners each covenant and agree, jointly and severally, to indemnify, defend and hold harmless Declarant, The Woodlands, their respective officers, directors, parent and/or subsidiary entities, partner(s) and any related persons or corporations, and their employees, professionals and agents from and against any and all claims, suits, actions, causes of action or damages arising from any personal injury, loss of life, or damage to property, sustained on or about the Common Property or other property serving the Association and improvements thereon, or resulting from or arising out of activities or operations of Declarant or of the Association, or of the Owners, and from and against all costs, expenses, court costs, counsel fees (including, but not limited to, expenses, court costs, counsel fees (including, but not limited to, all trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred or arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered relating thereto. The costs and expense of fulfilling this covenant of indemnification shall be considered operating costs of the Association to the extent such matters are not covered by insurance maintained by the Association. IT IS EXPRESSLY ACKNOWLEDGED THAT THE INDEMNIFICATION IN THIS SECTION PROTECTS DECLARANT AND THE WOODLANDS

(AND ANY PARENT OR SUBSIDIARY OR RELATED ENTITY OF ANY OF THEM) FROM THE CONSEQUENCES OF THEIR RESPECTIVE ACTS OR OMISSIONS, INCLUDING WITHOUT LIMITATION, DECLARANT'S AND/OR THE WOODLANDS' NEGLIGENT ACTS OR OMISSIONS, TO THE FULLEST EXTENT ALLOWED BY LAW.

Section 8. Ingress and Egress. Subject to entry gates, a perpetual easement for purposes of free and unimpeded ingress and egress (1) to and from Sawdust Road and each and all Unit(s) in this private residential area, and (2) to and from each Unit, and every other Unit, in this private residential area is hereby reserved for the benefit and use of the Declarant, the Association, The Woodlands, the Owners, and the guests, tenants, invitees, employees, agents and/or contractors of each, over and across the private streets and permanent access easements described and established by the plat recorded in Cabinet R, Sheet 66 of the Plat Records of Montgomery County, Texas, and any subsequent plats of any portions of Enclave at Mill Point. This easement for ingress and egress shall also be for the benefit of and may be used by any and all police, fire, ambulance and other similar law enforcement and emergency personnel.

Section 9. Easement Regarding Association Fences. Declarant hereby reserves for itself and for the Association a non-exclusive right-of-way and easement for the purpose of constructing, maintaining, operating, repairing, removing and re-constructing a perimeter fence under, across and through a 5' strip of the lots on which the Units are located along the perimeter of the Community and such other locations as determined by Declarant, on which 5' strips the Association may construct such perimeter fencing. Prior to the construction of the fence, the Declarant and/or the Association shall have the right to go over and across the portions of the lots on which the Units are located that are adjacent to such 5' easement strips for the purpose of performing surveys and other such necessary pre-construction work. After the construction of the fence, Declarant and/or the Association, from time to time, and at any time, shall have a right of ingress and egress over, along, across and adjacent to said 5' easement strips for purposes of maintaining, operating, repairing, removing, re-constructing, and/or inspecting the fence. The Owners of the Units shall have all other rights in and to such 5' easement strip located on each Owner's respective lot; provided however, such Owner shall not damage, remove or alter the fence or any part thereof without first obtaining written approval from the Declarant and/or the Association with respect to any such action, such approval to be at the Declarant's and/or the Association sole discretion.

Section 10. Telecommunication Services. The Declarant or Association may provide, either directly or by contracting with other parties, various telecommunication services to the Community. The Declarant or the Board of Directors of the Association shall have the sole discretion to determine whether or not such telecommunication services are provided, the types of services to be provided, the manner in which such services will be provided, the amount to be charged, and the method of paying for such services. The Declarant and/or the Association shall utilize the easements reserved in Sections 3 and 4 of this Article X to provide such services. Should the Declarant elect to provide such services, the Association shall accept such services from the Declarant and not provide, or contract with others to provide, or cause a duplication of, such

services. Should the Declarant be the entity to provide such services, the Association agrees not to cancel any contracts entered into by Declarant except for good cause.

(a) Types of Communication Services. The types of telecommunication services that may be provided by or through the Declarant or Association shall include, but not be limited to, any or all of the following: (i) local and long-distance telephone service; (ii) voice mail service, (iii) cable television service; (iv) internet connectivity including intranet services; (v) private television channels for education and community purposes; (vi) video monitoring of streets, Common Property, and other public areas; (vii) central home systems for fire and burglary monitoring; (viii) electronic utility meter reading systems; (ix) electronic mail systems, and (x) such other similar telecommunications services as the Board of Directors determines to be beneficial for the welfare or enjoyment of the members.

(b) Common Property Facilities. The telecommunications equipment, wiring and other facilities that are necessary to provide the telecommunication services may be owned by the Declarant or Association or the Declarant or Association may contract with other parties to provide such facilities on behalf of the Declarant or Association. The cost and expense of constructing, installing, operating, maintaining, repairing and replacing such facilities shall be paid by the Declarant or Association, and may included as part of the annual assessments and special assessments to the members.

(c) Residence Facilities. If the Declarant or Association determines to provide telecommunication services, it may require that each Unit constructed in the Community include wiring and other necessary equipment or other necessary facilities to provide access to the Unit for the telecommunication services described above. The necessary equipment will provide a connecting terminal for the wiring that extends to each outlet or point of access in the Unit for the telecommunications services. The Declarant or Association shall have the right to designate the type of necessary equipment to be installed and the manner in which such necessary equipment shall be operated, maintained and repaired, and may from time to time, designate appropriate replacements or improvements to the necessary equipment. The Declarant or Association may contract with other parties to provide the foregoing services relating to the necessary equipment. The Declarant or Association may require each Owner to pay all costs and expenses required to purchase, install, maintain, repair, replace or improve the necessary equipment for the Owner's Unit, which shall be paid each Owner in the same manner as a special assessment. The necessary equipment shall remain as a permanent fixture to the Unit and may not be removed from the Unit when it is sold to another party. The Declarant or Association and the parties with whom it contracts to provide services relating to the necessary equipment shall have an easement and right of entry over and across each lot and into each Unit for the purpose of installing, maintaining, repairing, replacing and making improvements to the necessary equipment.

(d) Optional Services. The installation of a necessary equipment in a Unit does not obligate the Owner to accept or pay for any of the telecommunication services that may be provided by, or available through, the Declarant or Association (except to the extent the Board of Directors

determines to provide a service to all members paid with annual assessments). Unless provided to all Owners and included in the assessments, each Owner shall have the right to (i) accept and pay for any such services provided by or through the Declarant or Association, (ii) contract with another party to provide such services, or (iii) decline such services, in whole or in part.

Section 11. Security and Other Services. The Association or Declarant may also but shall not be obligated to provide security and other services and facilities for the Community and shall be authorized to enter into contracts with other entities to provide such services and facilities. In addition to assessments, the Board shall be authorized to charge additional use and consumption fees for selected services and facilities. By way of example, some services and facilities which may be provided include, in addition to the telecommunication services listed in the preceding section, landscape, maintenance, concierge, and pest control services. The Board shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein is a representation as to what services and facilities will or will not be provided.

#### ARTICLE XI.

##### Annexation of Additional Property

Section 1. Annexation Without Approval of Membership. As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Declarant, its successors or assigns, shall have the unilateral right, privilege, and option, from time to time at any time until twenty (20) years from the date this initial Declaration is recorded in the Office of the County Clerk of Montgomery County, Texas, to annex and subject to the provisions of the Declaration and the jurisdiction of the Association all or any portion of tracts of real property, whether in fee simple or leasehold, by filing in the Montgomery County Real Property Records a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the vote of members of the Association or approval by the Association or any person. Any such annexation shall be effective upon the filing of such Supplemental Declaration in the Montgomery County Real Property Records unless otherwise provided therein.

Declarant shall have the unilateral right to transfer to any other person its right, privilege, and option to annex herein additional land, provided that such transferee or assignee shall be the developer of at least a portion of the additional land and shall be expressly designated by Declarant in writing as the successor to all or any part of Declarant's rights hereunder.

Any such annexation or addition shall be accomplished by the execution and filing for record by Declarant (or the other Owner of the property being added or annexed, to the extent such Owner has received a written assignment from Declarant of the right to annex), of an instrument to be called "Supplemental Declaration." Each Supplemental Declaration of annexation must set out and provide for the following:

(i) the name of the Owner of the property being added or annexed who shall be called the "Declarant" for purposes of that Supplemental Declaration;

(ii) the legal sufficient perimeter (or recorded subdivision description of the property being added or annexed to the Community, separately describing portions of the annexed property that are dedicated and/or conveyed to the public or any governmental or quasi-governmental authority for street right-of-way or utility facility purposes, those portions that are to comprise Units and related improvements and those portions that comprise Common Property;

(iii) a mutual grant and reservation of rights and assessments of the Owners in and to the existing and annexed Common Property;

(iv) that the property is being added or annexed into the Community in accordance with and subject to the provisions of the initial Declaration, as theretofore amended, and that the property being annexed into the Community shall be developed, held, used, sold and conveyed in accordance with and subject to the provisions of this Declaration as theretofore and thereafter amended;

(v) that all of the provisions of this Declaration, as theretofore amended, shall apply to the property being added or annexed with the same force and effect as if said property were originally included in this Declaration as part of the property; and

(vi) that a vendor's lien is therein reserved in favor of the Association, in the same manner as herein provided, to secure collection of the Assessments provided for, authorized or contemplated herein or in the Supplemental Declaration of annexation.

Each such "Supplemental Declaration" may contain other provisions not inconsistent with the provisions of the Declaration, as amended.

After additions or annexations are made, all assessments collected by the Association from the Owners in the annexed areas shall be commingled with the Assessments collected from all other Owners so that there shall be a common maintenance fund for the Community. Nothing in this Declaration shall be construed to represent or imply that Declarant, its successors or assigns, are under any obligation to add or annex additional land to the Property to this residential development.

Section 2. Annexation with Approval of Membership. In addition to the above and subject to the written consent of the owner thereof, upon the written consent by affirmative vote of two-thirds (2/3rds) of the total number of votes of the members of the Association entitled to be cast, the Association may annex or permit the annexation of real property and to the provisions of the Declaration and the jurisdiction of the Association by filing, or having the party owning such



property file, a Supplemental Declaration with respect to the property being annexed in the Montgomery County Real Property Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and any such annexation shall be effective upon recording in the Montgomery County Real Property Records unless otherwise provided therein. The timing of and manner in which notice of any such meeting of the property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Association for regular or special meetings, as the case may be.

## ARTICLE XII General Provisions

Section 1. Enforcement. Each Owner and every occupant of a Unit shall comply strictly with the By-Laws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to his or her Unit, if any. The Board of Directors may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Further, the Board may cause the rule, regulation, use restriction, covenant and/or condition to be complied with and bill the Owner the costs incurred by the Association to do so, along with an administrative fee as the Board may determine. Failure to comply with this Declaration, the By-Laws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent (and/or Declarant as long as Declarant is a Class "B" Member) shall have the power to enter upon a Unit or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Unit Owner ten (10) days' written notice of its intent to exercise self-help. 110% of all costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Unit Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind each Unit and shall inure to the benefit of and shall be enforceable by the Declarant and the Association or the Owner of any portion of the Community, their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended to successive periods of ten (10) years, unless an instrument signed by 80% of the then Owners has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants, conditions and restrictions, in whole or in part, or to terminate same, in which case this Declaration shall be modified or terminated as specified therein.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration, Federal Housing Administration or the Department of Housing & Urban Development, to enable such lender or purchaser to make or purchase mortgage loans on the Units subject to this Declaration; (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units subject to this Declaration; or (e) Declarant deems it to be in the best interests of the Community; provided, however, any such amendment shall not adversely affect the title to any Owner's Unit unless any such Unit Owner shall consent thereto in writing. Further, so long as the Class "B" membership exists, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Unit Owner hereunder, nor shall it adversely affect title to any Unit without the consent of the affected Unit Owner. Declarant's right to annex additional real property into the Association and make it subject to the terms of this Declaration shall not be deemed to materially adversely affect the substantive rights of any Unit Owner hereunder.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Class A Members owning at least 67% of the Units, with the consent of the Class B Members, as long as such membership exists. Amendments to this Declaration shall become effective upon recordation in the Official Public Records of Real Property of Montgomery County, Texas, unless a different effective date is specified therein. Notwithstanding this Section, there shall be no amendment of the provisions of Article XI, Section 1, regarding annexation rights of the Declarant.

Section 5. Partition. The Common Property shall remain undivided, and no Unit Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Units located within the Community.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or

invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article of Section to which they refer.

Section 9. Conveyance of Common Property. The Association shall accept such conveyances of Common Property as are made from time to time to the Association by Declarant. The Declarant shall determine, in its sole discretion, the appropriate time to convey all or any part of the Common Property to the Association. Any part of the Common Property can be conveyed to the Association at any time, with the Declarant retaining any other part of the Common Area for conveyance to the Association at a later time. At such time as the Declarant conveys all or any portion of the Common Property to the Association, such conveyance shall be subject to any and all easements, restrictions, reservations, conditions, limitations and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance and administration of the conveyed portions of Common Property and other obligations relating to the Common Property imposed herein. The Association shall, and does hereby, indemnify and hold Declarant harmless on account thereof. The Association shall be obliged to accept such conveyance(s) without setoff, condition or qualification of any nature. The Association shall immediately acknowledge any such conveyance if requested by Declarant. The Common Property, personal property and equipment and appurtenances thereto, shall be dedicated or conveyed in "AS IS", "WHERE IS" CONDITION WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON PROPERTY, PERSONALTY AND EQUIPMENT BEING CONVEYED. The Association shall pay all costs associated with the conveyance(s).

Section 10. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association

shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 11. NON-LIABILITY. NEITHER THE ASSOCIATION, THE WOODLANDS, NOR DECLARANT (NOR ANY PARTNER NOR PARENT NOR SUBSIDIARY NOR RELATED ENTITY NOR EMPLOYEE NOR AGENT OF ANY OF THEM) SHALL IN ANY WAY OR MANNER BE HELD LIABLE OR RESPONSIBLE FOR ANY VIOLATION OF THIS DECLARATION BY ANY OTHER PERSON OR ENTITY. NEITHER DECLARANT, THE WOODLANDS, NOR THE ASSOCIATION (NOR ANY PARTNER NOR PARENT NOR SUBSIDIARY NOR RELATED ENTITY NOR ANY EMPLOYEE NOR AGENT OF ANY OF THEM) MAKE ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE COMMON PROPERTY OR UNITS, OR THE EFFECTIVENESS OF ANY GATE, ACCESS SYSTEM OR MEDICAL ALERT SYSTEM. THE ASSOCIATION AND EACH OWNER DOES HEREBY HOLD DECLARANT, THE ASSOCIATION, THE WOODLANDS, (AND ANY PARTNER, PARENT, SUBSIDIARY, RELATED ENTITY OR EMPLOYEE OR AGENT OF ANY OF THEM) HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, THE WOODLANDS, NOR THE DECLARANT (NOR ANY PARTNER NOR PARENT NOR SUBSIDIARY NOR RELATED ENTITY NOR EMPLOYEE NOR AGENT OF ANY OF THEM) SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMON PROPERTIES, UNITS OR THE EFFECTIVENESS OF ANY SUCH SYSTEM. ALL OWNERS SPECIFICALLY ACKNOWLEDGE THAT THE COMMUNITY MAY HAVE A PERIMETER BOUNDARY SYSTEM, SUCH AS FENCES, WALLS, HEDGES, GATED ENTRIES OR THE LIKE. NEITHER THE ASSOCIATION, THE WOODLANDS, NOR THE DECLARANT, (NOR ANY PARTNER, NOR PARENT NOR SUBSIDIARY NOR RELATED ENTITY NOR EMPLOYEE NOR AGENT OF ANY OF THEM) SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNITS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, THE WOODLANDS, THEIR RESPECTIVE BOARDS AND OFFICERS, DECLARANT, ANY SUCCESSOR DECLARANT, OR THEIR NOMINEES, OR AGENTS OR ASSIGNS, DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, GATE ACCESS SYSTEM, BURGLAR ALARM SYSTEM, MEDICAL ALERT SYSTEM, OR OTHER SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS, GATE ACCESS SYSTEM, MEDICAL ALERT SYSTEM OR OTHER SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

Section 12. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of Declarant, its successors, and assigns over, under, in, and/or on the Community, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Community and any other property now owned or which may in the future be owned by Declarant (whether annexed hereunder or not), (such other property is hereinafter referred to as "Additional Property"). The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Community; and the right to tie into any portion of the Community with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Community; and

(b) the right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, and sales offices and construction offices in the Community.

(c) No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit-claim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

(d) If these reserved easements are exercised without annexing any Additional Property to the Community, the Owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities with the Owners in the Community in the proportion that the number of completed dwellings on the affected Additional Property bears to the total number of completed dwellings upon the affected Additional Property and the number of Units in the Community. The costs of maintenance and repair of Community driveways shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Community. The allocation of expenses and the collection therefor may be done on a monthly, quarterly or annual basis as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Community, from the time of the annexation, the sharing of costs and expenses and the use of any property so added shall be governed by this Declaration, rather than by these reserved easements.

Section 13. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association prior to extinguishment of the Declarant's Class B Membership shall contain a termination clause permitting the Association to terminate the contract or lease at any time after extinguishment of the Declarant's Class B Membership, without cause and without penalty, upon not more than ninety (90) days' written notice.

Section 14. Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the By-Laws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 15. Audit. An audit of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's audit at the annual meeting, the Class "A" members, by a majority vote, may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of the annual audited financial statement within ninety (90) days after the end of each fiscal year.

Section 16. Notice of Sale or Lease. In the event an Owner sells or leases his or her Unit, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Unit and such other information as the Board may reasonably require.

Section 17. Arbitration. In the event of any dispute arising between, among, against or on behalf of Owners relating to this Declaration, all parties to such dispute shall attempt to settle such dispute by mediation. Should mediation be unsuccessful, then each party shall appoint one (1) arbitrator. Should any such Owner refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing Owner. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) (or more) arbitrators shall be binding upon the Owners and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof and located in Montgomery County, Texas. However, this section shall not be construed to require arbitration of enforcement and/or collection actions by Declarant and/or the Association.

Section 18. Attorneys' Fees. If any controversy, claim or dispute arises relating to this instrument, its breach or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs.

Section 19. Waiver of Environmental Conditions. The term "Declarant" as used in this Section 19 shall have the meaning set forth in Article I (i) hereof and shall further include, without limitation, the Declarant, its general partner(s), partners, directors, managers, officers, employees, agents, contractors, sub-contractors, design consultants, architects, advisors, brokers, sales personnel and marketing agents. The term "Association" as used in this Section paragraph 20 shall have the meaning set forth in Article I(b) hereof and shall further include, without limitation, the Association, its Board of Directors, managers, employees, and agents. The Declarant and the Association shall not in any way be considered an insurer or guarantor of environmental conditions or indoor air quality within the any Unit. Neither shall the Declarant nor the Association shall be held liable for any loss or damage by reason of or failure to provide adequate indoor air quality or any adverse environmental conditions. The Declarant and the Association do not represent or warrant that any construction materials, air filters, mechanical, heating, ventilating or air conditioning systems and chemicals necessary for the cleaning or pest control of the Unit will prevent the existence or spread of biological organisms, cooking odors, animal dander, dust mites, fungi, pollen, tobacco smoke, dust or the transmission of interior or exterior noise levels. The Declarant and the Association are not an insurer and each Owner and occupant of any Unit and each tenant, guest and invitee of any Owner assumes all risks for indoor air quality and environmental conditions and acknowledges that the Declarant and the Association have made no representations or warranties nor has the Declarant and the Association, any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to the air quality within any Unit.

IN WITNESS WHEREOF, the undersigned being the duly appointed officers of Declarant herein, have executed this instrument this 30<sup>th</sup> day of August, 2002.

MHI PARTNERSHIP, LTD., a Texas limited partnership

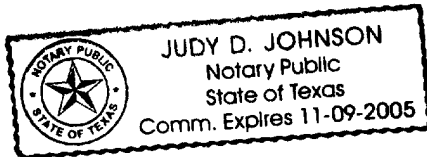
By: McGUYER HOMEBUILDERS, INC.

By: Michael K. Love  
Name: Michael K. Love  
Title: PRESIDENT

STATE OF TEXAS §  
  §  
COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this day personally appeared Michael K. Love, as President of McGuyer Homebuilders, Inc, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL this 30 day of August, 2002.



Judy D. Johnson  
NOTARY PUBLIC, State of Texas



THE WOODLANDS LAND DEVELOPMENT COMPANY, L.P., a Texas limited partnership

By: The Woodlands Operating Company, L.P., a Texas limited partnership Its Authorized Agent

By: [Signature]  
Name: Virgil L. Yoakum  
Title: Vice President

THE STATE OF TEXAS §  
COUNTY OF MONTGOMERY §

*Virgil L. Yoakum*

BEFORE ME, the undersigned authority, on this day personally appeared September 6, 2002, Vice President of The Woodlands Operating Company, L.P., a Texas limited partnership, Authorized Agent of THE WOODLANDS LAND DEVELOPMENT COMPANY, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein and herein set out and as an act and deed of said limited partnership.

GIVEN UNDER MY HAND AND SEAL this 6<sup>th</sup> day of September, 2002.

[Signature]  
Notary Public, State of Texas



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

LIENHOLDER'S CONSENT AND SUBORDINATION  
TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR ENCLAVE AT MILL POINT TOWNHOME  
ASSOCIATION, INC.

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MONTGOMERY §

That FIRST BANK + TRUST, a Texas corporation which is the beneficiary under that certain Deed of Trust dated FEB 15, 2002, executed by MHI PARTNERSHIP, LTD., encumbering all or a portion of the property described in Exhibit "A" hereto, which deed of trust is filed under County Clerk's File No. 2002-015792 and recorded in the Official Public Records of Real Property of MONTGOMERY County, Texas, executes this instrument to subordinate the lien of such deed of trust to the foregoing Declaration of Covenants, Conditions and Restrictions for ENCLAVE AT MILL POINT TOWNHOME ASSOCIATION, INC.

EXECUTED the 17<sup>th</sup> day of July, 2001.

FIRST BANK + TRUST  
Michele B Alvarado

By: \_\_\_\_\_  
Name: MICHELE B ALVARADO  
Title: VICE PRESIDENT

STATE OF TEXAS §

COUNTY OF Harris §

This instrument was acknowledged before me on June 19, 2002, by Michele B. Alvarado, Vice President of First Bank + Trust, a Texas corporation, on behalf of said corporation.



Karen Evans  
Notary Public, State of Texas

My Commission Expires: 7-28-03

LIENHOLDER'S CONSENT AND SUBORDINATION  
TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR ENCLAVE AT MILLPONT DOWNTOWN  
ASSOCIATION, INC.

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF Montgomery §

That Comerica Bank - Texas, a Texas corporation which is the beneficiary under that certain Deed of Trust dated August 9th, 2002, executed by MHE CAD., encumbering all or a portion of the property described in Exhibit "A" hereto, which deed of trust is filed under County Clerk's File No. 2002081966 and recorded in the Official Public Records of Real Property of Montgomery County, Texas, executes this instrument to subordinate the lien of such deed of trust to the foregoing Declaration of Covenants, Conditions and Restrictions for Village of Grogans Hill

EXECUTED the 23 day of July, 2002.

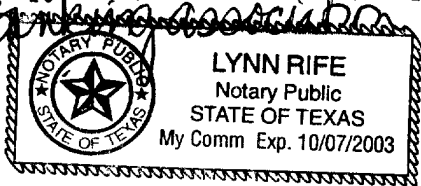
Comerica Bank - Texas

By: [Signature]  
Name: Larry A. Stroud  
Title: Vice President

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on 7/23, 2002, by Larry A. Stroud Vice President of Comerica Bank, a Texas corporation, on behalf of said corporation association



[Signature]  
Notary Public, State of Texas

My Commission Expires: 10/7/03

LIENHOLDER'S CONSENT AND SUBORDINATION  
TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR ENCLAVE AT MILL POINT

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MONTGOMERY §

That GUARANTY BANK, a FEDERAL SAVINGS BK, which is the beneficiary under that certain Deed of Trust dated AUGUST 6, 2002, executed by MHI PARTNERSHIP, Ltd., as borrower, encumbering all or a portion of the property described in Exhibit "A" hereto, which deed of trust is filed under County Clerk's File No. 2002080193 and recorded in the Official Public Records of Real Property of Montgomery County, Texas, executes this instrument to subordinate the lien of such deed of trust to the foregoing Declaration of Covenants, Conditions and Restrictions for Enclave at Mill Point.

EXECUTED the 22 day of AUGUST, 2002.

GUARANTY BANK  
By: Ronald McLeod  
Name: RONALD MCLEOD  
Title: VICE PRESIDENT

STATE OF TEXAS §  
COUNTY OF Harris §

This instrument was acknowledged before me on August 22, 2002, by Ronald McLeod, Vice President of Guaranty Bank, a Federal Saving Bank, on behalf of said bank.



Tara Durheim  
Notary Public, State of Texas

My Commission Expires: June 17, 2006

144-10-1717

AFTER RECORDING RETURN TO:

Sarah Ann Powers

Hoover Slovacek LLP

5847 San Felipe, Suite 2200

Houston, Texas 77057

144-10-1718

EXHIBIT "A"

Property Subject to this Declaration

[Description Attached]

144-10-1719

The Woodlands, Village of Grogan's Mill, Section 67, being 9.31 acres out of the John Taylor Survey, Abstract 547, Montgomery County, Texas, according to the map or plat thereof, recorded under File No. 2001-111488, Cabinet R, Sheet 66-Sheet 69.

AFTER RECORDING RETURN TO:

Sarah Ann Powers  
Hoover Slovacek LLP  
5847 San Felipe, Suite 2200  
Houston, Texas 77057

~~MEMORANDUM~~ MEMORANDUM:

At the time of recording, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.

FILED FOR RECORD

2002 SEP 12 AM 10:48

*Mark Turball*  
COUNTY CLERK  
MONTGOMERY COUNTY TEXAS

STATE OF TEXAS  
COUNTY OF MONTGOMERY

I hereby certify this instrument was filed in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Real Property at Montgomery County, Texas

SEP 12 2002

390558wp YCB 122179-04 9/10/02



*Mark Turball*  
County Clerk  
Montgomery County, Texas