

2003-082518

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**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**DEER RUN, SECTION TWO**

THIS DECLARATION, made as of July 1, 2003, by SEMAR, LTD., a Texas limited partnership, hereinafter referred to as "Declarant".

**WITNESSETH**

WHEREAS, Declarant is the owner of a certain tract of land containing 38.392 acres of land located in the Jonathan Pitts Survey, A-28, Montgomery County, Texas, being out of and a part of Reserve "J" of the Texaba Subdivision, as depicted on map or plat of said Subdivision recorded in Cabinet D, Sheet 17A of the Map Records of Montgomery County, Texas (said 38.392 acre tract being hereinafter sometimes called and referred to as the "Property"). The Property has been heretofore platted and subdivided into that certain Subdivision known and designated as DEER RUN, SECTION TWO (containing 34 Lots and 2 Restricted Reserves in 1 Block), as per map or plat thereof, of record in Cabinet U, Sheet 76, of the Map Records of Montgomery County, Texas; and

WHEREAS, Declarant desires to develop the Property and to provide for and adopt a uniform plan of covenants, easements, restrictions, conditions, dedications, reservations, charges and liens designed to govern, control and preserve the values and amenities of the Property for the better development, improvement, sale, use and enjoyment of the Property; and

WHEREAS, Declarant desires to provide for the maintenance of any common areas, and to this end desires to subject the Property to the covenants, easements, conditions, dedications, restrictions, reservations, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner of any part thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Property, to create a nonprofit corporation to which shall be delegated and assigned the powers of maintaining, administering and enforcing these covenants and restrictions, and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated Deer Run Property Owners Association, Inc., a Texas nonprofit corporation, and has established the bylaws by which said corporation shall be governed through its Board of Directors, for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, Declarant hereby declares that the Property shall be developed,

improved, held, used, sold and conveyed in accordance with and subject to the following easements, restrictions, reservations, dedications, covenants, conditions and stipulations, all of which are hereby adopted for and placed upon said Property and which shall run with the Property and be binding on all parties, now and at any time hereafter, having or claiming any right, title or interest in the Property or any part thereof, their heirs, executors, administrators, successors and assigns, regardless of the source of or the manner in which any such right, title or interest is or may be acquired, and all of which shall inure to the benefit of each Owner of any part of the Property.

Notwithstanding any provision to the contrary contained in this Declaration, unless otherwise specifically indicated herein, these Covenants, Conditions and Restrictions do not apply in any manner to the areas designated on the Subdivision Plat as **Reserves or Restricted Reserves** and such Reserves or Restricted Reserves are not restricted or affected in any manner by this instrument except as specifically provided herein.

### ARTICLE I - DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

Section 1. "Association" shall mean and refer to Deer Run Property Owners Association, Inc., a Texas nonprofit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to any properties, real or personal, owned by the Association for the common use and enjoyment of Members of the Association.

Section 3. "Declarant" shall mean and refer to SEMAR, LTD, a Texas limited partnership, its successors or assigns.

Section 4. "Lot" shall mean and refer to any of the numbered Lots shown on the Subdivision Plat intended for the construction of a single family residence.

Section 5. "Member" shall refer to every person or entity that holds a membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract purchasers, but excluding those having an interest merely as security for the performance of an obligation or those owning an easement right, a mineral interest, or a royalty interest.

Section 7. "Properties" shall mean and refer to the real property within the jurisdiction of the Association including the property included in the plat of the Property, the property included in the plat of Deer Run, Section One, as per map or plat thereof, of record in Cabinet R, Sheet 197, of the Map Records of Montgomery County, Texas and any additional lands incorporated into the

general scheme of development of the Deer Run Subdivision and added to the jurisdiction of the Association as provided herein.

Section 8. "Subdivision" shall mean and refer to DEER RUN, SECTION TWO, as set forth in the map or plat thereof recorded in Cabinet U, Sheet 76, of the Map Records of Montgomery County, Texas, Deer Run, Section One, as set forth in the map or plat thereof recorded in Cabinet R, Sheet 197, of the Map Records of Montgomery County, Texas, and any other real property brought within the general scheme of development and made a part of the Deer Run Subdivision, pursuant to Article X, Section 11 hereof.

Section 9. "Subdivision Plat" shall mean and refer to the recorded map or plat of the Subdivision and the plat of any other property that is now or hereafter becomes subject to this Declaration (or a similar declaration of covenants, conditions and restrictions) and any replat, partial replat, or amendment of the above-described plats.

## ARTICLE II - ARCHITECTURAL CONTROL COMMITTEE

SECTION 1. CREATION, PURPOSE AND DUTIES. There is hereby created an Architectural Control Committee (herein referred to as the "Committee"), initially comprised of Leo Hewett, Bob Secrest, Guy Martin and Jay Martin, each of whom shall serve until his successor is appointed as hereinafter provided. The Committee shall be responsible for enforcing and maintaining the architectural integrity of the improvements constructed or placed on the Lots and the quality of workmanship and materials utilized in the construction of such improvements in conformity with the restrictions herein. An action approved by a majority of the members of the Committee shall be deemed to be an act of the Committee. The duties and powers of the Committee, its successors and the designated representatives as provided for hereinbelow, shall cease on the earliest of December 31, 2022 or the date upon which the Class B membership in the Association ceases or the date on which such duties and powers are assigned by the Committee to the Association as evidenced by a written assignment filed for record in the Official Public Records of Real Property of Montgomery County, Texas, at which time the duties of the Committee shall be fulfilled and its powers exercised by the Board of Directors of the Association or by a committee appointed by the Board of Directors. A majority of the Committee may designate one member to act for it. In the event of the death or resignation of any person serving on the Committee, the Declarant shall designate a successor or successors who shall have all of the authority and power of his or their predecessor(s). Until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to exercise the powers herein granted to the Committee.

The Committee shall meet from time to time as is necessary to perform its duties hereunder. The Committee shall report in writing to the Board of Directors all final actions of the Committee and the Board of Directors shall keep a permanent record of such reported action.

No person serving on the Committee shall be entitled to compensation for services performed; provided, however, the Committee may employ one or more architects, engineers,

attorneys, or other consultants to assist the Committee in carrying out its duties hereunder, and the Association shall pay such consultants for services rendered to the Committee; provided, further, however, the members of the Committee shall be entitled to such compensation for services rendered and reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder as the Board of Directors may from time to time authorize or approve.

**SECTION 2. POWERS OF THE COMMITTEE.** No building, structure or other improvements shall be commenced, erected, maintained, constructed, or placed on any Lot, and no exterior alteration, including the removal of any trees therein shall be made until the site plan (including a description of the trees to be cleared on the Lot) and the final working plans and specifications have been submitted to and approved in writing by the Committee as to conformity with the restrictions herein contained and harmony of external design and location in relation to existing structures and topography. In the event the Committee fails to approve or disapprove the site plan and plans and specifications for proposed improvements or clearing within thirty (30) days after submission of all such materials to the Committee, approval thereof shall be deemed to have been given; provided, however, failure to approve or disapprove such site plan and final working plans and specifications shall not be deemed to permit the construction of any improvements in a manner prohibited under the terms of this Declaration.

The Committee shall have the right to specify architectural and aesthetic requirements for building sites, minimum setback lines, the location, height and extent of fences, walls or other screening devices, the number of trees to remain on the Lot, the orientation of structures with respect to streets, walks paths and structures on adjacent property and acceptable exterior matters, colors and finishes that may be utilized in construction or repair of improvements. The Committee shall have full power and authority to reject any site plan or final working plans and specifications that do not comply with the restrictions herein contained or that do not meet its minimum construction or architectural design requirements or that, in the sole and uncontrolled discretion and opinion of the Committee, will not be compatible with the overall character and aesthetics of the Subdivision.

Where specifically granted the power by the provisions hereof, the Committee shall have the right, exercisable at its sole discretion, to grant variances to certain restrictions in specific instances where the Committee in good faith deems that such variance does not adversely affect the architectural and environmental integrity of the Subdivision. The Committee may require the submission to it of such documents and items as it shall deem appropriate in connection with its consideration of a request for a variance. If the Committee shall approve such request for a variance, it shall evidence such approval, and grant its permission for such variance, only by written instrument addressed to the Owner of the property relative to which such variance has been requested, describing the applicable restriction(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, and describing (when applicable) the conditions on which the variance has been approved. Any request for a variance shall be deemed to have been disapproved in the event of either (a) written notice of disapproval from the Committee or (b) failure by the Committee to respond to the request for variance. The Committee shall have no authority to grant any variance except in the instances expressly provided herein.

**SECTION 3. NON-LIABILITY FOR COMMITTEE ACTION.** No member of the

Committee, the Association, any member of the Board of Directors, or Declarant shall be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Committee. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of any plans or specifications be deemed an approval of, any building or improvement from the standpoint of safety, whether structural or otherwise, or conformance with existing building codes, governmental laws or regulations. Furthermore, no member of the Committee, any officer or member of the Board of Directors or the Declarant shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association, or for a tort of another of such individuals, whether such individuals were acting on behalf of the Association, the Committee, the Board of Directors, or otherwise. Finally, neither Declarant, the Association, the Board of Directors, or the Committee, or their officers, agents, members or employees, shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements, or portion thereof, or for failure to repair or maintain the same.

### **ARTICLE III - DEER RUN PROPERTY OWNERS ASSOCIATION, INC.**

**SECTION 1. ORGANIZATION; PURPOSES; AUTHORITY.** Declarant has caused Deer Run Property Owners Association, Inc. to be organized and formed as a nonprofit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance funds, enforcement of the restrictions contained herein, providing for the maintenance, preservation and architectural control of the Lots, the general overall supervision of all of the affairs of and the promotion of the health, safety, and welfare of the Owners and residents within the Properties. To this end, the Subdivision is expressly made subject to the jurisdiction of the Association, and the Association shall have all of the powers and authority set out in its Articles of Incorporation and/or bylaws, including, but not limited to, all of the powers and authority of property owners associations as provided in Chapter 202 and Chapter 204 of the Texas Property Code.

**SECTION 2. FINES FOR VIOLATIONS.** The Association may assess fines for violations of the By-Laws of the Association, any architectural design guidelines promulgated by the Committee, any rules and regulations adopted by the Association relating to use of the Common Area, and the restrictive covenants contained in this Declaration (other than non-payment or delinquency in assessments) in amounts to be set by the Board of Directors, which fines shall constitute a lien on each Lot of the Owner against whom such fine is imposed, and such fines shall be recoverable in the same manner as the annual and special assessments; provided however, the Association may not foreclose the Association's lien if the debt secured by the lien consists solely of fines assessed by the Association or attorney's fees incurred by the Association solely associated with fines assessed by the Association

**SECTION 3. BOARD OF DIRECTORS.** The Association shall act through a Board of five (5) Directors, which all manage the affairs of the Association as specified in the bylaws of the Association. The number of Directors may be changed by the original bylaws or an amendment of the bylaws of the Association.

**SECTION 4. MEMBERSHIP.** Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any property that is subject to assessment by the Association.

**SECTION 5. VOTING.** The Association shall initially have two classes of voting membership:

- (a) **CLASS A.** Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all of such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.
- (b) **CLASS B.** Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned.

The Class B membership shall cease and be converted to Class A membership on the happening of the earlier of the following events: (i) when the total votes in the Class A membership equal the total votes in the Class B membership, (ii) on December 31, 2022, or (iii) such earlier date as Declarant so determines and records an instrument to such effect in the Real Property Records of Montgomery County, Texas; PROVIDED HOWEVER, that the Class B membership shall be automatically reinstated whenever additional property is subjected to the jurisdiction of the Association as herein provided, said Class B membership being subject to further termination at the time when, once again, the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership.

#### **ARTICLE IV - MAINTENANCE ASSESSMENTS**

**SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.** The Declarant, imposes on each Lot within the Subdivision, and the Owner of each Lot, by acceptance of a Deed thereto, whether or not it shall be expressed in the Deed or other evidence of conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges; and
- (b) Special assessments for capital improvements, such assessments or charges to be fixed, established and collected as hereinafter provided.

These assessments and charges, together with interest thereon as hereinafter provided, costs of collection, and reasonable attorney's fees, shall be a charge on the land and shall be secured by a continuing lien upon the property against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs of collection, and reasonable attorney's fees shall also be and remain the personal obligation of the Owner of the particular Lot at the time the assessment or charge fell due notwithstanding any subsequent transfer of title of such property. The

personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

**SECTION 2. PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and residents in the Subdivision, for the improvement and maintenance of the Common Area, if any. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association and, at the option of the Board of Directors of the Association, for any and all of the following purposes: street lighting, improving and maintaining streets, alleyways, paths, easements, and esplanades in the Subdivision; collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration; providing for the planting and upkeep of trees, grass and shrubbery in esplanades, easements, and in the Common Area, if any; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the lands within the Properties in a neat and good order or which they consider of general benefit to the Owners or occupants of the Properties, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. The judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

**SECTION 3. MAXIMUM LEVEL OF ANNUAL ASSESSMENTS.** The annual assessment per Lot is hereby set at Two Hundred Forty and No/100 (\$240.00) Dollars for the calendar year 2003. Thereafter, the Board of Directors of the Association at its sole discretion may increase the annual assessment by a maximum amount equal to a twenty percent (20%) increase over the annual assessment for the previous year without a vote of the Members of the Association. Each year after 2003, the annual assessment may be increased by more than twenty per cent (20%) by a vote of two-thirds (2/3rds) of the Members who are voting, in person or by proxy, at a meeting duly called for this purpose. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at any amount not in excess of the maximum. Annual assessments may be collected in advance on a monthly basis at the Board's election.

**SECTION 4. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS.** In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located upon any Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3 rds) of the votes of the Members who are voting, in person or by proxy, at a meeting duly called for this purpose. Special assessments may be collected on a monthly basis at the Board's election.

**SECTION 5. NOTICE AND QUORUM.** Written notice of any meeting called for the purpose of taking any action under Sections 3 or 4 above shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members or of proxies entitled to cast twenty per cent (20%) of all the votes of the membership shall constitute a quorum.

**SECTION 6. RATES OF ASSESSMENT.** Both annual and special assessments on all Lots (except Lots owned by Declarant) shall be fixed at uniform rates.

**SECTION 7. DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENT.** The annual assessment provided for herein shall commence as to each Lot on the conveyance of such Lot by the Declarant. Such assessment shall be adjusted according to the number of months remaining in the calendar year. On or before the 31<sup>st</sup> day of December in each year, the Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each Lot in the next calendar year. If the Board of Directors does not fix the amount of the annual assessment for the next calendar year, it shall remain the same as the previous year's assessment. Each annual assessment shall be due and payable in advance on the first day of January of each calendar year. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

**SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.** Any assessments or charges which are not paid when due, shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest from the original due date until paid at the lesser of eighteen per cent (18%) per annum or the highest non-usurious rate permitted by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or against the then Owner of the subject Lot(s) to foreclose the lien herein retained against the respective Lot or Lots. Interest as above specified, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment as a charge. Each such Owner, by his acceptance of a Deed hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such assessments and charges as a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien foreclosure on real property, and such Owner expressly grants to the Association a power of sale and non-judicial foreclosure in connection with the lien. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**SECTION 9. SUBORDINATION OF THE LIEN TO MORTGAGES.** As hereinabove provided, the title to each Lot shall be subject to a lien securing the payment of all assessments and charges due the Association, but the lien shall be subordinate to the lien of any first mortgage. The sale of any Lot shall not affect the lien in favor of the Association; PROVIDED, HOWEVER, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien securing such assessment or charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or the Owner thereof from liability

for any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided for hereinabove, the Association, in the sole discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine.

**SECTION 10. LOTS OWNED BY DECLARANT.** Notwithstanding any provision to the contrary in this Article IV or in this Declaration in general, no annual or special assessments or charges shall accrue or be assessed against Lots owned by the Declarant, whether such Lots are unsold Lots remaining in Declarant's inventory or have been previously sold or conveyed and subsequently foreclosed or repossessed by Declarant.

## **ARTICLE V-PROPERTY RIGHTS**

**SECTION 1. OWNER'S EASEMENT FOR ACCESS AND ENJOYMENT.** Subject to the provisions herein stated, every Member shall have an easement of access and a right and easement of enjoyment in the Common Area, if any, and such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights of the Association:

- (a) The Association shall have the right to borrow money and, with the assent of two-thirds (2/3rds) of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Area, if any, as security for money borrowed or debts incurred.
- (b) The Association shall have the right to take such steps as are reasonably necessary to protect any Common Area against foreclosure of any such mortgage.
- (c) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Common Area, if any, and to suspend the enjoyment rights and voting rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.
- (d) Upon approval by two-thirds (2/3rds) of each class of Members, the Association shall have the right to dedicate, sell or transfer all or any part of the Common Area, if any, to any public agency or authority for such purposes and subject to such conditions as may be approved by said two-thirds (2/3rds) of each class of Members; provided, however, nothing contained herein shall be construed to limit the right of the Association to grant or dedicate easements in portions of the Common Area, if any, to public or private utility companies.

**SECTION 2. DELEGATION OF USE.** Each Member shall have the right to extend his rights and easements of enjoyment to the Common Area, if any, to the members of his family, to his tenants who reside in the Subdivision, and to such other persons as may be permitted by the Association.

**SECTION 3. LIABILITY OF OWNERS FOR DAMAGE BY MEMBER.** Each Member shall be liable to the Association of any damage to any Common Area or for any expense or liability

incurred by the Association, to the extent not covered by insurance, that may be sustained by reason of the negligence or willful misconduct of such Member or for any violation by such Member of this Declaration for any of the rules or regulations adopted by the Board of Directors. The Association shall have the power to levy and collect an assessment against a Member, after notice and hearing, to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration or of its rules and regulations, or for any increase in insurance premiums directly attributable to any such damage or any such violation.

**SECTION 4. ASSOCIATION POWERS IN THE EVENT OF CONDEMNATION.** If any Common Area or interest therein is taken under exercise of the power of eminent domain or by private purchase in lieu of condemnation, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any mortgagee of any such property, or to any Lot Owner, to the extent such Common Area consists of an easement over the Lot of the Owner in question. The Association shall have the exclusive right to participate in such condemnation proceeding and to represent the interest of all Owners therein. Any award or funds received by the Association shall be held by the Association as determined by the Board of Directors, as reserve for future maintenance, repair, reconstruction, or replacement of the Common Area or may be used for improvements or additions to or operations of the Common Area.

## **ARTICLE VI-USE RESTRICTIONS**

**SECTION 1. RESIDENTIAL USE.** Each and every Lot is hereby restricted to residential dwellings for single-family residential use only. No business, professional, commercial or manufacturing use shall be made of any of said Lots, even though such business, professional, commercial or manufacturing use be subordinate or incident to use of the premises as a residence; provided, however, an Owner of a Lot in the Subdivision may use his residence for professional or other home occupations such as the maintenance of a personal or professional library, the keeping of personal business or professional records or accounts, or for the handling of personal business or professional telephone calls or correspondence so long as there are not external evidences thereof (such as signs, advertising a business or consulting in person with clients or customers at the Lot), and no unreasonable inconvenience to such Owner's neighbors. No structure other than one private single family dwelling, a guest house and/or servants quarters, a garage and carport appurtenant thereto and no more than two related outbuildings shall be constructed or permitted to remain on any Lot in the Subdivision. As used herein, the term "residential use" shall be construed to prohibit the use of any Lot for duplex houses, garage apartments for rental purposes, or apartment houses. Notwithstanding any provision to the contrary contained in this Section 1 or in any other provision of this Declaration, Declarant reserves the right and privilege of using any one Lot in the Subdivision for constructing and maintaining a sales and/or construction office in connection with the marketing and sale of Lots in the Subdivision and/or the construction of homes and other improvements in the Subdivision. During the period of such use by Declarant, Declarant may store construction materials and machinery on such Lot and, in general, utilize such Lot for any purpose reasonably consistent with its use as a sales and/or construction office.

**SECTION 2. ANIMALS AND LIVESTOCK.** Except as specifically permitted in this

section, no animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot. Dogs, cats, or other household pets may be kept on a Lot, provided that they are not kept, bred or maintained for any business or commercial purposes. Additionally, a maximum of two (2) horses may be maintained on a Lot provided that such horses are kept a minimum of one hundred fifty (150) feet behind the front boundary line of the Lot and provided further that they are not kept, bred or maintained for any business or commercial purposes. All county or, if applicable, City of Conroe leash laws related to animals shall apply. The Association, acting through its Board of Directors, shall have the authority (but not the obligation) to designate and identify, in its sole judgment and discretion, certain of the animals or breeds of animals that are permitted in the Subdivision by the above provisions that it deems to be unusually dangerous or to be an unusual risk to the health, safety and welfare of the residents of the Subdivision, and in connection therewith, the Association may require that such animals as so identified and designated be kept in an enclosure approved by the Association.

**SECTION 3. NUISANCES.** No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to residents of the Subdivision.

**SECTION 4. VEHICLES; DRIVEWAYS.** No vehicles, or parts thereof, may be parked or maintained in the streets of the Subdivision. No inoperable vehicle or vehicle without a current license tag and state inspection sticker shall be allowed on any Lot or in the Subdivision. No large trucks, such as eighteen-wheelers, tractor-trailer rigs, concrete trucks, garbage trucks or construction vehicles, shall be parked or permanently kept in the Subdivision. Unless otherwise approved by the Committee, no boat, boat trailer, boat rigging, trailer, bus, or camper shall be parked or kept in the street or on any Lot unless such vehicle is stored within a garage or behind the front of the residential dwelling and screened from public view from the street; provided, however, boats, boat trailers, boat riggings, motor homes, trailers, and campers may be temporarily parked in a driveway for a period not exceeding seventy-two (72) hours in any thirty (30) day period. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature. For the purposes of the foregoing term, "temporary" shall mean that the vehicle shall not remain in driveways or streets in excess of seventy-two (72) hours.

All personal vehicles must be parked on a driveway. All driveways shall be constructed of limestone or iron gravel, concrete or asphalt and shall be at least ten (10) feet wide [eighteen (18) feet wide at the street] extending from the street to the Owner's residence. The parking of vehicles other than on the driveway is expressly prohibited.

**SECTION 5. PERMITTED HOURS FOR CONSTRUCTION ACTIVITY.** Except in an emergency or when other unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 9:00 p.m.

**SECTION 6. OWNER'S LIABILITY FOR CONTRACTOR'S DAMAGE.** The Board of Directors shall establish guidelines for building contractors and home movers whose trucks and equipment will be used on the Properties. A copy of such guidelines shall be given to Owner upon

approval by the Committee of Owner's plans. It shall be Owner's responsibility to provide such guidelines to the contractor or the mover. In the event the Common Areas of the Property are damaged as a result of Owner's contractor or mover, the provisions of Article V, Section 3 shall apply.

**SECTION 7. DISPOSAL OF TRASH.** No trash, rubbish, garbage, manure, debris, or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping ground for such materials. All such matter shall be placed in sanitary refuse containers constructed of metal, plastic or masonry materials with tight fitting sanitary covers or lids and placed in an area adequately screened from the view of any streets. Equipment used for the temporary storage and/or disposal of such materials prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal. In a manner consistent with good housekeeping, the Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense.

**SECTION 8. BUILDING MATERIALS.** Unless otherwise approved by the Committee, no Lot shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced. Building materials may remain on Lots for a reasonable time, so long as the construction progresses without undue delay after which time these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. Under no circumstances shall building materials be placed or stored on any street.

**SECTION 9. MINERAL PRODUCTION.** No oil drilling, oil development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

**SECTION 10. NO FURTHER SUBDIVISION.** No Lot or residential unit thereon in the Subdivision may be further subdivided, nor may any easement or other interest therein less than the whole (including any timeshare estate) be conveyed by the Owner thereof (including Associations) except for the retention of easements and Common Areas by the Declarant, without the prior written approval of the Committee. Nothing in this Section 10 of Article VI shall be deemed to prevent an Owner from, or require the approval of the Committee for, (a) selling or leasing of an entire Lot; or (b) transferring or selling any Lot to more than one (1) owner to be held by them as tenants in common, joint tenants, or tenants by the entirety.

**SECTION 11. MAINTENANCE OF LOT.** Owners shall regularly mow all Lots such that the grass and other vegetation are never permitted to exceed six inches (6") in height. The Lot Owner shall also maintain, in a similar manner, the area between the property line and the pavement of a street.

**SECTION 12. OUTDOOR BURNING PROHIBITED.** No outdoor burning shall be

permitted on any Lot except in connection with (i) the initial clearing of such Lot for the construction thereon; (ii) the burning of debris during construction; or (iii) the burning of leaves or other botanical waste from the Lot. Under no circumstances shall any household trash or garbage be burned on any Lot.

**SECTION 13. FIREARMS.** The use or discharge of firearms in the Subdivision is strictly and expressly prohibited.

**SECTION 14. TIMBER HARVESTING; REMOVAL OF DIRT.** Unless approved by the Committee in writing, the harvesting of timber or removal of trees shall not be permitted on any Lot except as may be necessary for the construction of permitted improvements thereon. The digging and removal of dirt, gravel, iron ore, or any other surface materials or substances from a Lot is expressly prohibited except as may be necessary for the landscaping of or construction on such Lot.

## **ARTICLE VII-ARCHITECTURAL RESTRICTIONS**

**SECTION 1. TYPE OF RESIDENCE.** Only one residence shall be placed on each Lot. A residence is defined as a site-built frame or brick dwelling intended for use as a residence for one (1) family. No mobile homes, house trailers, manufactured homes or modular homes shall be permitted in the Subdivision. There shall be no basements, tents, shacks, garages, trailers, buses, barns, or other outbuildings erected or placed on any of said Lots to be used at any time as a residence, and all of the outbuildings must be kept painted and in a state of good appearance and repair at all times. No building or other structure shall be erected or placed on any Lot that has not been first approved by the Committee. All structures shall be of new construction and no structure shall be moved from another location onto any Lot without the approval of the Committee. All residences must be built on a concrete slab or pier and beam foundation. No residence shall be constructed on blocks. All residences must be kept in good repair and must be painted when necessary to preserve their attractiveness.

**SECTION 2. LIVING AREA AND CONSTRUCTION REQUIREMENTS.** All residences constructed upon such Lots shall contain not less than twelve hundred (1,200) square feet unless otherwise approved by the Committee. All residences must have a composition roof, unless otherwise approved by the Committee.

**SECTION 3. SEQUENCE OF BUILDING.** Without the prior written consent of the Committee, no garage or other service function building of the dwelling establishment shall be erected or placed upon any Lot until the dwelling is fully complete and ready for occupancy. Any structure begun on a Lot must be diligently completed within a reasonable length of time, not to exceed two hundred seventy (270) days.

**SECTION 4. LOCATION OF RESIDENCE ON LOT.** The location of each residence on a Lot will be approved by the Committee with its approval of the site plan and the final working plans and specifications. No residence or other building shall be located on any Lot nearer to the front or rear boundary lines or nearer to the side boundary lines than the minimum building setback

lines as shown or referenced on the Subdivision Plat. If not otherwise depicted or referenced on the Subdivision Plat, the applicable minimum building setback lines on each Lot shall be five feet (5') for the side property lines, and twenty-five feet (25') for the rear property line and the front property line. The Committee, in its discretion and for good cause, may grant variances in the minimum setback requirements for particular Lots.

**SECTION 5. CONSTRUCTION PERIOD EXCEPTION.** During the course of actual construction of any permitted structure or improvement thereunder, and provided construction is proceeding with due diligence, the Committee temporarily shall suspend the provisions of Article VI contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided, however, during the course of any such construction, nothing shall be done that will result in a violation of any of the provisions of this Declaration upon completion of the construction or that will constitute a nuisance or unreasonable interference with the use and enjoyment of the other properties within the Subdivision.

**SECTION 6. TEMPORARY BUILDINGS.** Except for storage buildings approved by the Committee, no temporary buildings or structures shall be permitted on any Lot.

**SECTION 7. FENCES.** The construction or installation of walls, fences, and hedges by Owners shall be subject to the approval by the Committee in accordance with the provisions of this Declaration. All walls or fences shall be a maximum of six (6) feet in height and shall be constructed only of materials approved by the Committee. Owners shall construct and maintain a fence or other suitable enclosure as approved by the Committee to screen from public view, yard equipment and woodpiles or storage piles. The Owner shall be responsible for maintaining and repairing all walls, fences and hedges located on the Owner's Lot.

**SECTION 8. GRASS AND SHRUBBERY.** Grass and weeds shall be kept mowed so that the height from the ground level up does not exceed six (6) inches. If the height of the grass and/or underbrush on a Lot exceeds six (6) inches and after ten (10) days written notice to Owner of his violation of these covenants and said condition remains, the Association by its representative shall have the right of entry onto the property for the purpose of mowing the grass and/or underbrush with the Owner being billed for the expense. If the expense remains unpaid for thirty (30) days, the unpaid account shall be considered an assessment and subject to the lien provided for in Article IV Section 1 hereof and to collection as set out under Article IV Section 8 herein. Dead or damaged trees which might create a hazard to property or persons within the Subdivision shall be promptly removed or repaired, and if not removed by the Owner upon request, then the Association may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damages caused by such removal. Trees having a diameter of six (6) inches or greater shall not be removed without the consent of the Committee. Vacant Lots shall not be used as dumping grounds for rubbish, trash, rubble, or soil, except that the Declarant may designate fill areas into which materials specified by Declarant may be placed. The Association may plant, install and maintain shrubbery and other screening devices around boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain and replace such shrubbery or other screening devices.

**SECTION 9. SIGNS.** No signs, billboards, posters, or advertising devices of any kind shall be permitted on any Lot without the prior written consent of the Committee other than one sign of not more than three (3) square feet advertising the particular Lot on which the sign is situated for sale or rent. The right is reserved by Declarant to construct and maintain signs, billboards, and advertising devices as is customary in connection with the sale of newly constructed residential dwellings. In addition, the Declarant and the Association shall have the right to erect identifying signs at each entrance to the Subdivision.

**SECTION 10. EXTERIOR ANTENNAE AND SATELLITE DISHES.** All radio and television wires, antennae and satellite dishes shall be placed to the rear of the roof ridge line. Satellite dishes shall not exceed twenty-four inches (24") in diameter.

**SECTION 11. CONSOLIDATION OF LOTS.** Any person owning two or more adjoining Lots may consolidate such Lots into a single building site with the privilege of constructing improvements permitted herein. The resulting building site shall be considered a single Lot for the purpose of the minimum setback lines. However, for all other purposes, including voting and the payment of annual maintenance assessments and special assessments, the Lots comprising the building site shall remain separate and distinct.

**SECTION 12. MAILBOXES.** Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community. Furthermore, mailboxes shall meet the minimum standards of the United States Postal Service as to type, location and placement of the mailboxes.

**SECTION 13. AIR CONDITIONERS.** No window or wall type air conditioners shall be permitted in any residence, but the Committee, at its discretion, may permit window or wall type air conditioners to be installed if such unit or units will not be visible from any street.

**SECTION 14. INTERFERENCE.** No radio or television signal or any other forms of electromagnetic radiation shall be permitted to originate from any Lot that unreasonably interferes with the reception of television or radio signals upon any other Lot.

**SECTION 15. WATER SUPPLY AND WASTE WATER DISPOSAL.** No water well system shall be constructed or used on any Lot, but each Lot Owner must use the utility services provided by the Declarant or other designated utility operator for the Subdivision. No privy, cesspool or outdoor toilets shall be placed or maintained on any part of the Property. All residences shall be connected to a septic or aerobic system that meets or exceeds Montgomery County and, if applicable, City of Conroe requirements. All such systems shall be maintained in proper working condition and approved by the appropriate governmental authority. The drainage of septic tanks into any road, street, alley or ditch, either directly or indirectly, is strictly prohibited.

**SECTION 16. SOUND DEVICES.** No horns, whistles, bells, or other sound devices, except for security systems used exclusively to protect a residence, shall be placed or used on any Lot or on any residence. This paragraph shall not preclude the use of outdoor speakers for hi-fi's, stereos, or radios if the sound level is maintained at a reasonably low level with respect to the

adjoining property.

**SECTION 17. STORAGE AND DISPOSAL OF GARBAGE AND REFUSE.** The Association may enter into contracts with a commercial waste disposal company that grants that company the exclusive right for the trash collection and waste disposal in the Subdivision. Owner shall be responsible to contract individually with such company for the collection and removal of Owner's trash or waste from the Subdivision. No Lot shall be used or maintained as a dumping ground for trash or rubbish. Trash, garbage and other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Lot shall be used for the open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction commences and may be maintained for a reasonable time, so long as the construction progresses without undo delay, until the completion of the improvements, after which such materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

**SECTION 18. SOLAR COLLECTORS.** No solar collector shall be installed without the prior written approval of the Committee. Any such installation shall be in harmony with the design of the residence that is it used in conjunction with. Solar collectors shall be installed in a location not visible from any street in front of the residence.

**SECTION 19. PRIVATE UTILITY LINES.** All electrical, telephone, and other utility lines and facilities that are located on a Lot and are not owned by a governmental entity or a public utility company shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

**SECTION 20. PROPANE AND BUTANE STORAGE TANKS.** No tanks for the storage of propane or butane shall be placed on any Lot outside of the minimum setback lines for such Lot. All such tanks shall be located in the back yard of the residence and shall be screened from street view by buildings, lattice work, fencing or shrubbery.

**SECTION 21. CLOTHESLINES.** All clotheslines must be set behind any residence, out of view from any street.

**SECTION 22. ENFORCEMENT OF LOT MAINTENANCE.** In the event of the violation of any covenant herein by any Owner or occupant of any Lot and the continuance of such violation after ten (10) days written notice thereof, or in the event the Owner or occupant has not proceeded with due diligence to complete appropriate repairs and maintenance after such notice, Declarant or the Association shall have the right (but not the obligation), through its agents or employees, to enter upon such Lot and to secure compliance with the restrictions and restore such Lot to a neat, attractive, healthful and sanitary condition. The Declarant or Association may render a statement of charge to the Owner or occupant of such Lot for the cost of such work. The owner or occupant agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt. In the event of the failure to pay for such work, the amount of such statement may be added to the

annual maintenance charge provided for herein and shall be secured by a lien on the Lot in the same manner as such annual charge. The Declarant, the Association, or their agents and employees shall not be liable and are hereby expressly relieved from any liability, for trespass or other tort in connection with the performance of the maintenance and other work authorized herein.

**SECTION 23. DAMAGE OR DESTRUCTION OR IMPROVEMENTS.** The Owners are bound and obligated through the purchase of a Lot to maintain the Lot and all improvements thereon in a neat and habitable manner. In the event of damage to any improvements, the Owner shall have the shorter of the period permitted by applicable law or sixty (60) days to begin repairing or demolishing the destroyed or damaged portion, and once commenced, such repairs or demolition must be pursued diligently to completion. If, however, damage to the improvements is not covered by insurance, or if the Owner's claim is not approved by the Owner's insurance company, or if the Owner decides not to restore the improvements at such time, then the Owner may apply for a "hardship" extension to the operation of this restriction to be submitted to the Board of Directors within sixty (60) days from the date of such destruction or damage. The Board of Directors shall rule on the Owner's application of a "hardship" extension within thirty (30) days from the date of submission. In no event shall the granting of a "hardship" extension in a particular case be deemed a waiver of the right to enforce this restriction thereafter. If a "hardship" extension is granted, the Owner thereafter immediately shall cause the damaged or destroyed improvement to be demolished and the Lot to be suitably landscaped, subject to the approval of the Committee, so as to present a pleasing and attractive appearance.

## **ARTICLE VIII- EASEMENTS**

**SECTION 1. UTILITY EASEMENTS.** Easements for the installation and maintenance of utilities are reserved as shown or provided for on the Subdivision Plat or as dedicated by separate instruments. Neither Declarant nor any utility company or authorized political Subdivision using the easements referred to herein shall be liable for any damages done by them or their assigns, agents, employees or servants, to fences, shrubbery, trees, flowers, improvements or other property of the Owner situated on the land covered by such easements as a result of construction, maintenance or repair work conducted by such parties or their assigns, agents, employees or servants.

**SECTION 2. CABLE TELEVISION.** Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies and Declarant shall have the right and power in such agreement or agreements to grant to such cable television companies the uninterrupted right to install and maintain communications cable and related ancillary equipment and appurtenances within the utility easements and right-of-ways dedicated by the Subdivision Plat or by separate instruments pertaining to the Subdivision. Declarant does hereby reserve unto itself, its successors and assigns, the sole and exclusive right to receive and retain all income, revenue or other things of value paid by such cable television company or companies pursuant to any such agreements.

**SECTION 3. MAINTENANCE OF DETENTION FACILITIES AND DRAINAGE AND DETENTION.** The Association shall be responsible for maintaining all detention facilities and

drainage and detention easements depicted on the Subdivision Plat or otherwise applicable to any and all sections of Deer Run, and the Association may use so much of the maintenance fund as is required in order to maintain such facilities and easements. In the event the Association fails to maintain the detention facilities or drainage and detention easements, Montgomery County or the City of Conroe, as applicable, is authorized, but shall not be obligated, to maintain such facilities and easements, and for such purpose, to exercise the maintenance assessment authority provided for herein, including enforcement of the maintenance lien securing payments of the maintenance charges.

### **ARTICLE IX-ENFORCEMENT.**

The Declarant, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, the covenants, conditions, restrictions and liens contained herein. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

### **ARTICLE X-GENERAL PROVISIONS.**

**SECTION 1. DURATION.** This Declaration shall remain in full force and effect until December 31, 2032 and thereafter shall, as then in force, be extended automatically and without further notice, and without limitation, for successive periods of ten (10) years each, unless modified or terminated in the manner hereinafter set forth.

**SECTION 2. AMENDMENT, MODIFICATION OR TERMINATION.** This Declaration may be amended or modified at any time in any particular or terminated in its entirety by the recording in the Official Public Records of Real Property of Montgomery County, Texas of an amendment or termination instrument, signed by Owners representing two-thirds (2/3rds) of the total votes of the Members of the Association. Additionally, Declarant reserves the right to amend this Declaration without the joinder of any Owner or Member for the limited purpose of correcting typographical or scrivener's errors.

**SECTION 3. NOTICES.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

**SECTION 4. VIOLATION OF RESTRICTIONS.** Enforcement of the provisions hereof shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain or prevent such violations or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. Such enforcement may be by the Owner of any Lot, or by the Declarant, its successors or assigns, or by the Association. The failure of any person entitled to enforce any of the provisions hereof to enforce the same shall in no event be deemed a waiver of the right to enforce this Declaration thereafter.

**SECTION 5. SEVERABILITY.** Invalidation of one or more of the covenants, conditions, reservations, or restrictions herein contained by judgment or court order or otherwise shall in no way affect any of the other covenants, conditions, dedications, reservations or restrictions, which shall continue and remain in full force and effect.

**SECTION 6. GOOD-FAITH LENDERS CLAUSE.** Any violation of these restrictions shall not affect any lien or deed of trust of record held in good faith upon any Lot or any part thereof, which liens may be enforced in due course, subject to the covenants, conditions, dedications, reservations and restrictions contained herein.

**SECTION 7. CONFLICT WITH EXISTING RESTRICTIONS; ENFORCEMENT BY ASSOCIATION.** The Subdivision, together with other properties in the vicinity of the Subdivision, is currently subject to certain other restrictive covenants set out in instrument entitled "West Restriction Agreement", which is recorded in the Official Public Records of Real Property of Montgomery County, Texas under Clerk's file No. 9453639 (Film Code No. 009-00-1615) and Clerk's File No. 9460010 (Film Code No. 017-00-1676). This Declaration and the covenants, conditions, restrictions and dedications herein are in addition to and independent of the restrictive covenants in the West Restriction Agreement. If any part of this Declaration shall appear to be in conflict with any valid and subsisting covenant, condition or restriction in the West Restriction Agreement or in any previously recorded deed of conveyance or declaration covering the Property, the two documents shall be read and construed together and reconciled to the extent possible; however, in the event the conflict is irreconcilable, the covenant, condition or restriction that is the more restrictive and burdensome shall control to the extent of such conflict. The Association shall be entitled and empowered to enforce the restrictive covenants in the West Restriction Agreement.

**SECTION 8. GENDER AND GRAMMAR.** The singular whenever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

**SECTION 9. TITLES.** The titles of this Declaration of Articles and Sections contained herein are included for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

**SECTION 10. REPLATTING.** Declarant shall have the right, but shall never be obligated, to re-subdivide into Lots, by recorded plat or in any lawful manner, any Reserve tracts contained within the Subdivision that are not specifically dedicated for a particular purpose and such Lots as replatted may be subjected to these restrictions as if such Lots were originally included herein.

**SECTION 11. ANNEXATION.** Additional property may be annexed into the jurisdiction of the Association by recorded restrictions upon the consent of two-thirds (2/3rds) of each class of Members of the Association; PROVIDED, HOWEVER, Declarant may annex additional stages of development without such approval by the Members. The Owners of Lots in such annexed property, as well as all Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Common Areas, if any, that may become subject to the jurisdiction of the Association,

provided that such annexed property shall be impressed with and subject to the annual maintenance assessment imposed hereby on a uniform per Lot basis.

**SECTION 12. MERGER AND CONSOLIDATION.** Upon a merger or consolidation of the Association with another non-profit corporation organized for the same purposes, the Association's properties, rights and obligations may be transferred to the surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions, and restrictions established by this Declaration, together with the covenant, conditions, and restrictions applicable to the properties of the other association, as one scheme. However, such merger or consolidation shall not affect any revocation, change or addition to the covenants established by this Declaration and no merger or consolidation shall be permitted except with the assent of two-thirds (2/3rds) of each class of Members of the Association or with the consent of Declarant.

**SECTION 13. DISSOLUTION.** The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3rds) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be offered for conveyances to an appropriate public or governmental agency of Montgomery County, Texas. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization devoted to such similar purposes.

**SECTION 14. RIGHT OF ENTRY; ENFORCEMENT BY SELF-HELP.** During reasonable hours subject to reasonable security requirements, the Association and its authorized agents and representatives shall have the right, in addition to and not in limitation of all of the rights it may have under this Declaration, to enter upon any Lot, including any improvements located thereon, for emergency, security, maintenance, repair or safety purposes, which right may be exercised by the Associations' Board of Directors, officers, agents, employees, managers and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in any emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or occupant of a Lot. Authorized personnel of the Association performing outside lawn and landscape maintenance shall also have such right of entry. Any such entry shall constitute an authorized entry and the Declarant, the Association, or their agents and representatives shall not be deemed guilty of trespass by reason thereof. In addition to any other remedies provided herein, the Association or its duly authorized agent shall have the power to enter upon any Lot to abate or remove, using such force as is reasonably necessary, any improvement that is made to the Lot, other structures, thing or condition that violates this Declaration, or any use restrictions. Unless an emergency situation exists, such self-help shall be preceded by written notice. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments. All such entries shall be made with as little inconvenience to the Owner as is practicable in the judgment of the Association and any damages caused thereby (as distinguished from repairs with respect to which the Association is entitled to an assessment and lien to be reimbursed) shall be

borne by the Association.

SECTION 15. COMPLIANCE WITH APPLICABLE LAW. Notwithstanding any provision to the contrary contained in this Declaration, the Association's collection of maintenance assessments and enforcement of the covenants and restrictions set out in this Declaration shall be pursuant to and in accordance with the relevant provisions of the Texas Property Code and other applicable law and nothing herein shall be construed as authorizing any enforcement procedures or other action by the Association in contravention of any such Property Code provisions or other applicable law.

IN WITNESS WHEREOF, the Declarant, has executed this Declaration this the 1st day of July, 2003.

SEMAR, LTD.,  
a Texas limited partnership

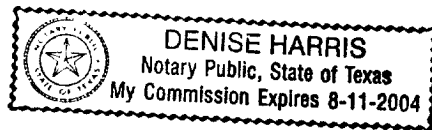
By: MARCREST, L.L.C.,  
its General Partner

By: *Robert D. Secrest*  
Name: Robert D. Secrest  
Title: Managing Member

THE STATE OF TEXAS §

COUNTY OF MONTGOMERY §

This instrument was acknowledged before me this the 14 day of July 2003, by ROBERT D. SECREST, Managing Member of MARCREST, L.L.C., a Texas limited liability company, on behalf of said company, as General Partner and on behalf of SEMAR, LTD., a Texas limited partnership.



*Denise Harris*  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**

Semar, Ltd.  
1712 N. Frazier, Suite 210  
Conroe, Texas 77301

FILED FOR RECORD

364-10-1005

2003 JUL 14 PM 3: 50

*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.

JUL 14 2003



*Mark Turball*  
County Clerk  
Montgomery County, Texas