

RESTATED AND AMENDED DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THE STATE OF TEXAS  
COUNTY OF COLORADO

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION made as of the date hereinafter set forth by E. GLENN McMILLAN of Colorado County, Texas, hereinafter called Declarant.

W I T N E S S E T H :

WHEREAS, heretofore, certain covenants and restrictions were filed against the following described property by Declaration dated March 21, 1984, recorded in Volume 498, Page 103, Colorado County Deed Records, and by Amendment dated July 24, 1986, recorded in Volume 527, Page 440, Colorado County Deed Records, (such Declaration and Amendment being hereinafter referred to as the "Restrictive Covenants") and this Declaration is intended to restate and amend such Restrictive Covenants and this Declaration is executed in lieu of such Restrictive Covenants as recorded, and such Restrictive Covenants are hereby declared to be null and void and the provisions of this Declaration shall set forth all protective covenants, conditions, restrictions, liens, and charges which affect the property hereinafter described; and

WHEREAS, E. Glenn McMillan, hereinafter called the Declarant, is the owner of all that certain real property located in Colorado County, Texas, described as follows:

Lots 1 to 87 inclusive, CEDARCREST SUBDIVISION, a subdivision situated in the John Hall Survey, A-265 of Colorado County, Texas, as set forth in a subdivision plat filed in the Map Records of Colorado County, Texas as Map Slide 61;

and

WHEREAS, the Declarant will convey the above-described properties subject to certain protective covenants, conditions, restrictions, liens, and charges as hereinafter set forth;

NOW, THEREFORE, it is hereby declared that all of the property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and

desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title, or interest in and to the above-described property or any part thereof, and their heirs, successors, and assigns, and which easements, restrictions, covenants, and conditions shall inure to the benefit of each owner thereof.

ARTICLE ONE

DEFINITIONS

Owner

1.01 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot or portion of a lot on which there is or will be built a detached single family dwelling, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Properties

1.02 "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Lot

1.03 "Lot" shall mean and refer to that portion of any of the plots of land shown upon the plat and subdivision map recorded as Map Slide 61 of the Map Records of Colorado County, Texas, on which there is or will be built a single family dwelling. The term "Lot" shall not include the Common Area nor any other reserves shown on the said map or plat.

Declarant

1.04 "Declarant" shall mean and refer to E. Glenn McMillan, his heirs, representatives, successors and assigns, or any person or entity which shall acquire all undeveloped Lots owned by Declarant.

ARTICLE TWO

ARCHITECTURAL CONTROL

~~Architectural Control Committee~~

2.01 Declarant shall designate and appoint an Architectural Control Committee consisting of not less than three (3) qualified persons, which committee shall serve at the pleasure of the Declarant; provided, however, that after 44 lots have come under the ownership of persons other than Declarant, the owners of all lots shall be free to form an association for the purpose of terminating the tenure of existing members of the Architectural Control Committee and electing successor members thereof, provided, that all lot owners and members of the Architectural Control Committee are given reasonable notice of any meetings of such association and all lot owners shall have the right to belong to the same and vote, either in person or by written proxy, in any election held to terminate an existing member, or to elect a successor member to the Architectural Control Committee. A majority vote of all lot owners, at least 44, shall be necessary to terminate a member of the Architectural Control Committee, and such terminated member shall serve until a replacement is elected by a majority vote of all lot owners. Such successor members of the Architectural Control Committee shall serve until terminated as set forth above. All members of the Architectural Control Committee shall serve without compensation.

Approval of Plans and Specifications

2.02 No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to, or change or alteration therein, be made, nor shall any landscaping of any Lot or Lots be undertaken, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to, and approved in writing by, the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography.

Failure of Committee to Act

2.03 In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and such Committee shall fail either to approve or reject

such plans and specifications for a period of sixty (60) days following such submission, approval by the Committee shall not be required, and full compliance with this Article shall be deemed to have been had.

ARTICLE THREE

EXTERIOR MAINTENANCE

In the event that an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a neat and orderly manner, the Declarant or the Cedarcrest Homeowner's Association shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and exterior of the buildings and any other improvements erected thereon, all at the expense of Owner. Any such expenses shall be due by the owners of any such Lot upon demand, and, if not paid shall be assessed against such Lot as an additional maintenance fee due, in addition to the maintenance fee due as hereinafter provided with the same rights to a lien to enforce payment of same as hereinafter provided.

ARTICLE FOUR

USE RESTRICTIONS

Type of Buildings Permitted

4.01 All Lots shall be used for residential farm or ranch purposes only.

Setbacks

4.02 No building shall be located on any Lot nearer to the Lot line or nearer to the edge of any street or road easement than fifty (50) feet. For the purpose of this covenant, eaves, steps, and open porches shall not be considered as part of the building; provided, however, that this shall not be construed to permit any portion of the building on any Lot to encroach upon another Lot. If two or more Lots, or fractions thereof, are consolidated into a building site in conformity with the provisions of Paragraph 4.04, these building setback provisions shall be applied to such resultant building site as if it were one original, platted Lot.

Resubdivision or Consolidation

4.03 Lots may be resubdivided, but only after securing the prior written approval of the Architectural Control Committee. Any person owning two or more adjoining Lots may consolidate such Lots into one building site, with the privilege of constructing improvements as permitted in Paragraphs 4.02 and 4.03 hereof on each resulting building site without seeking the consent of such Committee.

Easements

4.04 Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and in the Dedication of Roads and Easements. No utility company, water district, political subdivision, or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, or flowers, or to other property of the Owner situated within any such easement.

Noxious or Offensive Activities Prohibited

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

Prohibited Residential Uses

4.06 No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, except that a trailer, tent or camper may be used for temporary occupancy on a lot for not more than 14 days at any one time, and except that a trailer or mobile home may be used as a permanent residence if prior written approval is obtained from the Architectural Control Committee as to type, location on the lot, skirting and landscaping.

Signs

4.07 No signs of any character shall be allowed on any Lot except one sign of not more than five square feet advertising the property for sale or rent; provided, however, that Declarant and

any other person or entity engaged in the construction and sale of residences within the subdivision shall have the right, during the construction and sales period, to construct and maintain such facilities as may be reasonably necessary or convenient for such construction and sale, including, but not limited to, signs, offices, storage areas, and model units.

Oil Development Prohibited

4.08 No oil well drilling, oil development operations, oil refining, quarrying, or mining operation of any kind shall be permitted on a Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted on any Lot.

Rubbish, Trash and Garbage

4.09 No Lot shall be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition.

Fences, Walls, Hedges and Utility Meters

4.10 No fence, wall, hedge, or utility meter shall be placed, or permitted to remain, on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot, except for decorative subdivision entry fences.

Trucks, Buses and Trailers

4.11 No truck, bus, or trailer shall be left parked in the street in front of any Lot except for construction and repair equipment while a residence or residences are being built or repaired in the immediate vicinity, and no truck, bus, boat, or trailer shall be parked on the driveway or any portion of the Lot in such manner as to be visible from the street.

Prohibited Activities

4.12 No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot.

## ARTICLE FIVE

## EASEMENTS

Reservation of Easements

5.01 All easements in alleys for the installation and maintenance of utilities and drainage facilities are reserved as shown on the plat recorded as Map Slide 61 of the Map Records of Colorado County, Texas, and in the Dedication of Roads and Easements filed in Colorado County, Texas. Right of use for ingress and egress shall be had at all times over any dedicated easement, and for the installation, operation, maintenance, repair, or removal of any utility, together with the right to remove any obstruction that may be placed in such easement which would constitute interference with the use, maintenance, operation, or installation of such utility.

## ARTICLE SIX

## CEDARCREST HOMEOWNERS ASSOCIATION

6.01. Membership. Every person or entity who is a record Owner of any of the Properties which are subject to or which may become subject to a maintenance charge assessment by the Association, shall be a member of the CEDARCREST HOMEOWNERS ASSOCIATION. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. Each Owner of each Lot shall be entitled to one membership, and if a Lot should be subdivided, the Owner of each resubdivided Lot will be entitled to one membership, but will also be obligated to pay the annual maintenance charge assessed against each Lot as hereinafter provided. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association. Ownership of such land shall be the sole qualification for membership.

6.02. Non-Profit Corporation. CEDARCREST HOMEOWNERS ASSOCIATION, a non-profit corporation, (the "Association") shall be organized and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

6.03. By-Laws. The Association may make whatever rules or by-laws it may choose to govern the organization; provided that the same are not in conflict with the provisions hereof.

6.04. Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during normal business hours.

6.05. Annexation of Property. Additional residential property and common area outside of CEDARCREST SUBDIVISION may be annexed to the Properties covered by the Association, and subject to the jurisdiction and benefits of the Association, upon majority vote by the members of the Association at a regular or special meeting of the members.

6.06. Maintenance Charge. Each Lot in CEDARCREST SUBDIVISION is hereby subjected to an annual maintenance charge and assessment for the purpose of creating a fund to be designated and known as the "maintenance fund", which maintenance charge and assessment will be paid by the owner or owners of each Lot within CEDARCREST SUBDIVISION to CEDARCREST HOMEOWNERS ASSOCIATION on or before January 1 of each year, in advance annual installments, commencing on a date to be promulgated by the Board of Directors of the Association. The rate at which each Lot will be assessed will be determined annually and may be adjusted from year to year by the Association as the needs of the Subdivision may, in the judgment of the Association, require; provided, that such assessment will be uniform (except as hereafter provided). The amount of the annual assessment will be in the sum of \$120.00 per Lot per year, which assessment may be increased or decreased upon approval of the Board of Directors of the Association; provided, however, such maintenance charge may not be increased in any one year by more than fifteen percent (15%) of the prior years

assessment. The Association shall use the proceeds of such maintenance fund for the use and benefit of all Owners of Lots in CEDARCREST SUBDIVISION as well as all other property annexed or which may be a part of the Association to which the Lots herein described have been annexed; provided, however, that other sections to be entitled to the benefit of this maintenance fund must be impressed with and subjected to the annual maintenance charge and assessment on a uniform, per Lot basis, equivalent to the maintenance charge and assessment imposed hereby, and further made subject to the jurisdiction of the Association. The uses and benefits to be provided by said Association shall include, by way of clarification and not limitation, at its sole option, any and all of the following: constructing and maintaining streets, alleys, paths, parks, parkways, lakes, easements, esplanades, cul-de-sacs and other areas and facilities for common use, payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions and conditions affecting the Properties to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment, and doing other things necessary or desirable, in the opinion of the Association, to keep the Properties in the subdivision neat and in good order or which is considered of general benefit to the Owners or occupants of the Properties, it being understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith. Nothing herein shall constitute a representation that any of the above will, in fact, be provided by the Association. Each person who accepts a deed to a Lot or Lots agrees, by the acceptance of same, to pay such maintenance charge and assessments as herein provided.

6.07. Term. The above maintenance charge and assessment will remain effective for the full term (and extended term, if applicable) of the within covenants.

6.08. Maintenance Charge Due by Declarant. Notwithstanding anything contained herein to the contrary, it is understood and agreed that all undeveloped Lots which are owned by Declarant in the Cedarcrest Subdivision shall only be assessed a maintenance charge equal to one-half (1/2) of the maintenance charge assessed in any one year, as provided above. Provided, however, during the first five (5) years following the date of these Restrictive Covenants, Declarant may, at his option, pay the maintenance fee assessed, as provided herein, or Declarant may pay to the Association an amount equal to any expenses incurred by the Association over and above the amount of assessments paid by other Lot Owners in the Cedarcrest Subdivision. After the expiration of five (5) years from the date of these Restrictions, Declarant will owe the amount of the assessment due, as herein provided.

6.09. Liens for Payment. To secure the payment of the maintenance fund established hereby and to be levied on individual residential Lots, there shall be reserved in each deed (whether specifically stated therein or not) by which the Declarant will convey such Lots, the vendor's lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law by such beneficiary; provided, however, that each such lien shall be secondary, subordinate and inferior to all liens, present and future, given, granted and created by or at the instance and request of the owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the construction of improvements on any such Lot to the extent of any such maintenance fund charge accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien; and further, provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes, the Association shall give the holder of such first mortgage lien sixty (60) days' written notice of such

proposed action, which notice shall be sent to the nearest office of such first mortgage holder by prepaid U. S. Postal Service, and shall contain a statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Lot covered by such first mortgage lien to the holder thereof.

6.10. Subordination of Lien. The vendor's lien, reserved herein as security for the payment of the annual and special assessments set out herein, shall be subject, subordinate, inferior and secondary to all liens, mortgages and encumbrances, whether now or hereafter existing, that (i) are created to secure the payment of the purchase price of all or any part of any Lot (and any improvements thereon) situated within the plat establishing CEDARCREST SUBDIVISION or (ii) are created to secure the payment of all amounts due or to become due under and by virtue of any contract, now or hereafter executed, for the construction, addition or repair of any improvements now or hereafter situated upon all or any part of the Tract situated within CEDARCREST SUBDIVISION.

The sale or transfer of any Lot shall not affect the lien securing the assessments provided for herein. However, the sale or transfer of any Lot, pursuant either to mortgage foreclosure or to any proceeding in lieu thereof, shall extinguish the lien of such assessments as to any payments that have become due and payable prior to such foreclosure or sale or transfer in lieu thereof from liability for any assessments thereafter becoming due and payable nor release any such Lot from the lien securing payment of such subsequent assessments.

#### ARTICLE SEVEN

#### GENERAL PROVISIONS

#### Enforcement

7.01 The Declarant, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions,

conditions and reservations now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Severability

7.02 Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

Duration and Amendment

7.03 The covenants, conditions, and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Declarant or the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns, and, unless amended as provided herein, shall be effective for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive period of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners; during any succeeding ten (10) year period, the covenants, conditions, and restrictions of this Declaration may be amended during the last year of such ten (10) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. No amendment shall be effective until recorded in the Real Property Records of Colorado County, Texas, nor until the approval of any governmental regulatory body which is required shall have been obtained.

Executed by the said Declarant, this 29th day of July, 1988.

E. Glenn McMillan  
E. Glenn McMillan

CONSENT OF MORTGAGEE

The undersigned, Bay City Federal Savings & Loan Association, being the owner and holder of an existing mortgage lien upon and against the land and property described in the foregoing Restated and Amended Declaration of Covenants, Conditions and Restrictions for CEDARCREST SUBDIVISION, a Subdivision in Colorado County, Texas, as such mortgagee and lienholder does hereby consent to said Declaration and to the recording of same.

This consent shall not be construed or operate as a release of said mortgage or lien owned and held by the undersigned or any part thereof.

Signed this the 19TH day of August, 1988.

BAY CITY FEDERAL SAVINGS & LOAN ASSOCIATION

BY: James W. Cox  
JAMES W. COX

THE STATE OF TEXAS §

COUNTY OF Matagorda §

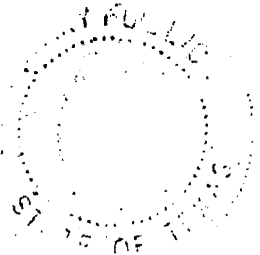
This instrument was acknowledged before me on the 19th day of August, 1988, by James W. Cox, Sr. Vice President of BAY CITY FEDERAL SAVINGS & LOAN ASSOCIATION, a officer, on behalf of said Association.

Donna Everett  
Notary Public in and for the State of Texas.



THE STATE OF TEXAS §  
COUNTY OF CAMERON §

This instrument was acknowledged before me on the 29th day of July, 1988, by E. GLENN McMILLAN.



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

Printed Name: K. L. VAUGHAN

My Commission Expires: 05 05 89

3176

FILED FOR RECORD

2 day of Sept 1988  
at 12:10 o'clock A.M.

DARLENE HAYEK  
CLERK COUNTY COURT, COUNTY OF CAMERON, TEXAS

By [Signature]  
Deputy

SHIRLEY S. WOOD

RETURN TO:  
ELLIOTT + WALDRON

PD 29.00

Recorded the 7th day of Sept.  
DARLENE HAYEK, County Clerk

A.D. 1988 at 12:10 o'clock P.M.  
By Lana Jenzel Deputy.

NOTICE OF DEDICATORY INSTRUMENT  
for  
CEDARCREST HOMEOWNERS' ASSOCIATION

2005 APR 20 PM12: 56

DARLENE HAYEK DL  
COLORADO CO. CLERK

THE STATE OF TEXAS           §  
  §  
COUNTY OF COLORADO       §

The undersigned, being the President of Cedarcrest Homeowners' Association ("Association"), a property owners' association as defined in Section 202.001 of the Texas Property Code hereby certifies as follows:

1. **Property:** The Property to which the Notice applies is described as follows:  
  
Lots 1 to 87, inclusive, Cedarcrest Subdivision, a subdivision situation in the John Hall Survey, A-265 of Colorado County, Texas, as set forth in a subdivision plat filed in the Map Records of Colorado County, Texas as Map Slide 61.
2. **Restrictive Covenants:** The description of the documents imposing restrictive covenants on the Property, the amendments to such documents, and the recording information for such documents are as follows:
  - a. **Documents:**
    - (1) Declaration of Covenants, Conditions and Restrictions.
    - (2) Amendment to Declaration of Covenants, Conditions and Restrictions.
    - (3) Restated and Amended Declaration of Covenants, Conditions, and Restrictions.
  - b. **Recording Information:**
    - (1) Colorado County Clerk's File Number in Volume 498, Page 103.
    - (2) Colorado County Clerk's File Number in Volume 527, Page 440.
    - (3) Colorado County Clerk's File Number in Volume 582, Page 98.
3. **Other Dedicatory Instrument:** In addition to the Restrictive Covenants identified in Paragraph 2, above, the following documents are Dedicatory Instrument governing the Association which were previously recorded in the Official Public Records of Real Property of Harris County, Texas:
  - a. **Documents:**
    - (1) Dedication of Roads and Easements.

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b. **Recording Information:**

(1) Colorado County Clerk's File Number in Volume 562, Page 112.

4. **Dedictory Instrument:** In addition to the Restrictive Covenants identified in Paragraph Two (2) above, the following documents are Dedictory Instrument governing the Association:

- a. Article.s of Incorporation of Cedarcrest Homeowners' Association.
- b. By-Laws Cedarcrest Homeowners' Association.
- c. Resolution Adopted by Unanimous Written Consent of Directors of Cedarcrest Homeowners Association, Inc.

True and correct copies of such Dedictory Instrument are attached to this Notice.

This Notice is being recorded in the Official Public Records of Real Property of Colorado County, Texas for the purpose of complying with Section 202.006 of the Texas Property Code. I hereby certify that the information set forth in this Notice is true and correct and that the copies of the Dedictory Instrument attached to this Notice are true and correct copies of the originals.

Executed on this 14 day of April, 2005.

**CEDARCREST HOMEOWNERS' ASSOCIATION**

By: Gloria McMillan  
Gloria McMillan, President

THE STATE OF TEXAS

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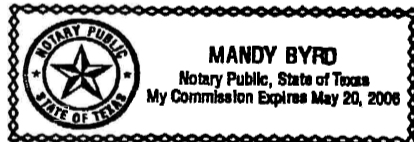
COUNTY OF Dallas

BEFORE ME, the undersigned notary public, on this day personally appeared Gloria McMillan, President of Cedar Crest Homeowners' Association, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and in the capacity therein expressed. SUBSCRIBED AND SWORN TO BEFORE ME on this the 14 day of April, 2005, to certify which witness my hand and official seal.

Mandy Byrd  
Notary Public in and for the State of Texas

Return to: ✓

Butler & Hailey, P.C.  
1616 S. Voss, Suite 500  
Houston, Texas 77057



102911

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LGS/VV/RSM

FILED  
In the Office of the  
Secretary of State of Texas

SEP 30 1988

Corporations Section

ARTICLES OF INCORPORATION  
OF  
CEDARCREST HOMEOWNERS' ASSOCIATION

WE, the undersigned and natural persons of the age of twenty-one years or more, at least two of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE ONE

The name of the Corporation is CEDARCREST HOMEOWNERS' ASSOCIATION.

ARTICLE TWO

The Corporation is a non-profit corporation.

ARTICLE THREE

The period of its duration is perpetual.

ARTICLE FOUR

The Corporation is formed for the purposes of providing for maintenance and preservation of the streets and common area within that certain tract of property described as:

Lots 1 to 87 inclusive, CEDARCREST SUBDIVISION, a subdivision situated in the John Hall Survey, A-165 of Colorado County, Texas, as set forth in a subdivision plat filed in the Map Records of Colorado County, Texas, as Map Slide 61;

and to promote the health, safety and welfare of the residents within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for these purposes and to:

1. Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Restated and Amended Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration," applicable to the aforesaid property and recorded in the Deed Records of Colorado County, Texas, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

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2. Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

3. Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

4. Borrow money and mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

5. Dedicate, sell or transfer all or any part of the properties under its control to any public agency, authority or utility for such purpose and subject to such conditions as it may determine;

6. Have and exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Act of the State of Texas may by law now or hereafter have or exercise; provided that none of the objects or purposes herein set out shall be constructed to authorize the corporation to do any act in violation of said Non-Profit Corporation Act or Part Four of the Texas Miscellaneous Corporation Laws Act, and all such objects or purposes are subject to said Acts.

#### ARTICLE FIVE

The street address of the initial registered office of the corporation is 2707 North Loop West, Suite 380, Houston, Texas 77008, and the name of its initial registered agent at such address is Joe F. Wheat.

ARTICLE SIX

The number of Directors constituting the initial Board of Directors is three (3), and the names and addresses of the persons who are to serve as the initial Directors are:

<u>Name</u>	<u>Address</u>
E. Glenn McMillan	P. O. Box 5356 Brownsville, Texas 78520
Daniel W. McMillan	5615 Hiltonview Houston, Texas 77086
Timothy R. McMillan	P. O. Box 177 New Ulm, Texas 78950

ARTICLE SEVEN

The name and street address of each incorporator is:

<u>Name</u>	<u>Address</u>
Reba S. Marshall	2707 N. Loop W., Suite 380 Houston, Texas 77008
Lou P. Bailey	2740 Fenwood Houston, Texas 77005
Joe F. Wheat	2707 N. Loop W., Suite 380 Houston, Texas 77008

SIGNED this 27th day of September, 1988.

Reba S. Marshall  
Reba S. Marshall

Lou P. Bailey  
Lou P. Bailey

Joe F. Wheat  
JOE F. WHEAT

THE STATE OF TEXAS §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared REBA S. MARSHALL, LOU P. BAILEY, and JOE F. WHEAT, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

SWORN TO UNDER MY HAND AND SEAL OF OFFICE, this the 27th day of September, 1988.

Irene McAlpine  
Notary Public in and for  
the State of Texas.

Irene McAlpine Commission: 12-31-88

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LG8/WW/RSM

BY-LAWS  
OF  
CEDARCREST HOMEOWNERS' ASSOCIATION

ARTICLE I

Name and Location

The name of the Corporation is CEDARCREST HOMEOWNERS' ASSOCIATION, hereinafter referred to as the "Association". The principal office of the Association shall be located at Brownsville, Texas, but meetings of members and Directors may be held at such places within the State of Texas, as may be designated by the Board of Directors.

ARTICLE II

Definitions

Section 1. "Association" shall mean and refer to CEDARCREST HOMEOWNERS' ASSOCIATION, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Restated and Amended Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Lot" shall mean and refer to any lot or plot of land shown upon any recorded subdivision map of the Properties.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and those having only an interest in the mineral estate.

Section 5. "Declarant" shall mean and refer to E. Glenn McMillan, his heirs, successors and assigns, if such successors or assigns should acquire all undeveloped Lots owned by Declarant for the purpose of development.

Section 6. "Declaration" shall mean and refer to the "RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS and RESTRICTIONS" applicable to the Properties, recorded in the Office of the County Clerk of Harris County, Texas.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

ARTICLE III

Meeting of Members

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 P.M. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at anytime by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of the membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting, to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each Class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE IV

Board of Directors; Selection; Term of Office

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) Directors, who need not be Members of the Association.

Section 2. Term of Office. The initial Board of Directors shall be those named in the Articles of Incorporation of the Association for terms of five (5) years, six (6) years, and seven (7) years, respectively from and after the date of the organizational meeting of the Board of Directors. Upon the expiration of five (5) years after the organizational meeting, the Members shall elect one (1) Director at the next annual meeting for a term of three (3) years, and thereafter, at each annual meeting, the Members shall elect one Director for a term of three (3) years.

Section 3. Removal. A Director may be removed from the Board, with cause, by vote of the Members of the Association. In the event of removal, death or resignation of a Director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of the predecessor.

Section 4. Compensation. No Director shall receive compensation for any service he may render to the Association; however, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

#### ARTICLE V

##### Nomination and Election of Directors

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at any annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or Non-Members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI

Meetings of Directors

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any Director, after not less than three (3) days notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII

Powers and Duties of the Board of Directors

Section 1. Powers. The Board of Directors shall have power to:

- a) Suspend the voting rights of a Member during any period in which such Member shall be in a default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
- b) Exercise, for the Association, all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- c) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- d) Employ a manager, an independent contractor or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members, at the annual meeting of the Members, or at any

special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote.

b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

c) As more fully provided in the Declaration, to:

(i) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(ii) Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(iii) Foreclose the lien against any property for which assessments are not paid within a reasonable time after due date or to bring an action at law against the Owner personally obligated to pay the same.

d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid; a reasonable charge may be made by the Board for the issuance of these certificates; if a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

e) Procure and maintain adequate liability and hazard insurance on property owned by the Association; and

f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

#### ARTICLE VIII

##### Officers and Their Duties

Section 1. Enumeration of Officers. The officers of this Association shall be a President and Vice President, who shall, at all times, be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may, from time to time, by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and shall hold office for one (1) year, or until his successor shall be elected and qualified, unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, having such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at anytime giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 4 of this Article.

#### President

a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

#### Vice President

b) The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

#### Secretary

c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; service notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association, together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

ARTICLE IX

Committees

The Association shall appoint an Architectural Control Committee as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

Books and Records

The books, records and papers of the Association shall, at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

Assessments

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 6% per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. 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.

ARTICLE XII

Corporate Seal

If adopted by the Board of Directors, the Association shall have a seal in circular form having within its circumference the words: CEDARCREST HOMEOWNERS' ASSOCIATION.

ARTICLE XIII

Amendments

Section 1. The Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIV

Miscellaneous

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the Directors of the CEDARCREST HOMEOWNERS' ASSOCIATION, having hereunto set our hands effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

\_\_\_\_\_  
E. Glenn McMillan

\_\_\_\_\_  
Daniel W. McMillan

\_\_\_\_\_  
Timothy R. McMillan