

30A



CHICAGO TITLE  
GF *Courtesy*  
SW

ORIGINAL

*CC's*  
*DB*  
*DB*  
*Platform - DB*

*Reid*  
*5/25/05*

**ARCOTT PLACE  
SECTION TWO**

DECLARATION OF COVENANTS AND RESTRICTIONS  
AND  
DECLARATION OF ANNEXATION

Prepared by:

THE HOLOWAY JONES LAW FIRM, P.L.L.C.  
407 JULIE RIVERS DRIVE  
SUGAR LAND, TEXAS 77478  
(281) 242-8100  
FAX: (281) 242-7474

## TABLE OF CONTENTS

ARTICLE I. ....	-2-
Definitions .....	-2-
ARTICLE II. ....	-3-
Easements .....	-3-
Section 1. <u>Existing Easements</u> .....	-3-
Section 2. <u>Changes and Additions</u> .....	-3-
Section 3. <u>Title to Easements and Appurtenances Not Conveyed</u> .....	-4-
Section 4. <u>Installation and Maintenance</u> .....	-4-
Section 5. <u>Emergency and Service Vehicles</u> .....	-4-
Section 6. <u>Underground Electric Service</u> .....	-4-
Section 7. <u>Surface Areas</u> .....	-5-
ARTICLE III. ....	-5-
Property Subject to This Declaration .....	-5-
Section 1. <u>Description</u> .....	-5-
Section 2. <u>Mineral Exception</u> .....	-6-
Section 3. <u>Additions to Existing Property</u> .....	-6-
Section 4. <u>Acquisition of Additional Common Area</u> .....	-7-
Section 5. <u>Withdrawal of Property</u> .....	-7-
ARTICLE IV. ....	-7-
The Association .....	-7-
Section 1. <u>Organization</u> .....	-7-
Section 2. <u>Purpose</u> .....	-7-
Section 3. <u>Implied Rights</u> .....	-7-
Section 4. <u>Directors</u> .....	-7-
Section 5. <u>Members</u> .....	-8-
Section 6. <u>Voting Rights</u> .....	-8-
Section 7. <u>Suspension of Voting Rights</u> .....	-9-
Section 8. <u>Dissolution</u> .....	-9-
ARTICLE V. ....	-9-
Assessments .....	-9-
Section 1. <u>Annual Maintenance Fund</u> .....	-9-
Section 2. <u>Covenants for Assessments</u> .....	-11-
Section 3. <u>Unimproved Lots Owned by Declarant or Builders</u> .....	-11-

Section 4. <u>The Annual Maintenance Assessments</u> . . . . .	-12-
Section 5. <u>Duties of the Board of Directors</u> . . . . .	-13-
Section 6. <u>Special Assessments for Capital Improvements</u> . . . . .	-13-
Section 7. <u>Liens to Secure Assessments</u> . . . . .	-13-
Section 8. <u>Option for No Assessment</u> . . . . .	-14-

ARTICLE VI. . . . . -14-

Architectural Standards . . . . .	-14-
Section 1. <u>Purpose</u> . . . . .	-14-
Section 2. <u>Architectural Control Committee</u> . . . . .	-15-
Section 3. <u>Architectural Approval</u> . . . . .	-15-
Section 4. <u>Limitation of Liability</u> . . . . .	-16-
Section 5. <u>Committee Membership</u> . . . . .	-16-
Section 6. <u>Transfer of Authority to the Association</u> . . . . .	-17-
Section 7. <u>Dissolution of Association</u> . . . . .	-17-
Section 8. <u>Minimum Construction and Maintenance Requirements</u> . . . . .	-17-
Section 9. <u>Size of Residence</u> . . . . .	-19-
Section 10. <u>Building Location</u> . . . . .	-19-
Section 11. <u>Walls, Fences, and Hedges</u> . . . . .	-20-
Section 12. <u>Exceptions</u> . . . . .	-21-

ARTICLE VII. . . . . -22-

Building and Use Restrictions . . . . .	-22-
Section 1. <u>Residence Buildings</u> . . . . .	-22-
Section 2. <u>Single Family Residential Use</u> . . . . .	-22-
Section 3. <u>Temporary and Other Structures</u> . . . . .	-22-
Section 4. <u>Noxious or Offensive Activity</u> . . . . .	-23-
Section 5. <u>Prohibited Conduct</u> . . . . .	-23-
Section 6. <u>Signs</u> . . . . .	-23-
Section 7. <u>Animals</u> . . . . .	-24-
Section 8. <u>Removal of Dirt</u> . . . . .	-24-
Section 9. <u>Garbage and Refuse Storage and Disposal</u> . . . . .	-24-
Section 10. <u>Owner's Maintenance</u> . . . . .	-24-
Section 11. <u>Mineral Production</u> . . . . .	-25-
Section 12. <u>Drainage</u> . . . . .	-25-
Section 13. <u>Default</u> . . . . .	-25-

ARTICLE VIII. . . . . -26-

General Provisions . . . . .	-26-
Section 1. <u>Duration</u> . . . . .	-26-

Section 2. <u>Enforcement</u> .....	-26-
Section 3. <u>Attorney's Fees</u> .....	-26-
Section 4. <u>Amendment</u> .....	-26-
Section 5. <u>Interpretation</u> .....	-27-
Section 6. <u>Omissions</u> .....	-27-
Section 7. <u>Titles</u> .....	-27-
Section 8. <u>Successors in Title</u> .....	-27-
Section 9. <u>Notices</u> .....	-27-
Section 10. <u>Gender and Grammar</u> .....	-27-
Section 11. <u>Severability</u> .....	-27-
ARTICLE X. ....	-28-
FHA/VA Approval .....	-28-

DECLARATION OF COVENANTS AND RESTRICTIONS  
AND DECLARATION OF ANNEXATION  
ARCOTT PLACE SECTION TWO  
(A SINGLE FAMILY RESIDENTIAL SUBDIVISION)

THE STATE OF TEXAS

§  
§  
§

COUNTY OF FORT BEND

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration"), is made on the date hereinafter set forth, by Stephens/Tingley, L.P., a Texas limited partnership (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article III of this Declaration, and desires to create thereon a single family home residential community with designated "Lots" (as that term is defined hereinafter) for the benefit of the present and future owners of said Lots; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and, to this end, desires to subject the real property described in Article III, together with such additions as may hereafter be made thereto (as provided in Article III) to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to permit the creation of an agency to which will be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused a non profit corporation to be incorporated under the laws of the State of Texas, for the purpose of exercising the functions aforesaid; and

WHEREAS, by virtue of a Declaration of Covenants and Restrictions recorded under File No. 2003095109 of the Official Records of Real Property of Fort Bend County, Texas (the "Principal Declaration"), Declarant has created, out of that portion of the property which is more particularly described in such Principal Declaration, a subdivision known as Arcott Place Section One and has imposed upon such subdivision the covenants, conditions and restrictions set forth in the Principal Declaration; and

WHEREAS, as contemplated by the Principal Declaration in Article III Section 4 thereof, Declarant now desires to annex a subdivision owned by Declarant more particularly described in

Article III Section 1 herein, which subdivision is known as Arcott Place Section Two, and to impose upon Arcott Place Section Two the covenants, conditions and restrictions as set forth in the Principal Declaration and any amendments thereto only to the extent that owners herein and the Declarant herein shall be members of the Association with equal voting rights as are "Owners" and the "Declarant" as defined in the Principal Declaration, and only for such purposes shall this Declaration be deemed to be a "Supplemental Declaration" as defined in the Principal Declaration, all as part of Declarant's uniform plan and scheme for the development of Arcott Place.

NOW, THEREFORE, the Declarant declares that the real property described in Article III is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants, restrictions, easements, charges, and liens (sometimes referred to herein collectively as "Covenants and Restrictions") hereinafter set forth.

## ARTICLE I.

### Definitions

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to Arcott Place Homeowners' Association, Inc., a Texas non-profit corporation, its successors and assigns.
- (b) "Subdivision" shall mean and refer to the property more fully described in Article III, Section 1 herein.
- (c) "Subdivision Plat" shall mean and refer to the Map or Plat of ARCOTT PLACE SECTION TWO, which has been filed at Clerk's File No. 20040009, Official Public Records, Fort Bend County, Texas.
- (d) "Lot" and/or "Lots" shall mean and refer to each of the lots shown on the Subdivision Plat.
- (e) "Owner" shall mean and refer to the record owner, or if such Lot is subject to a term purchase contract with Declarant, to the contract seller, whether one or more persons or entities, of the fee simple title to any Lot within the Subdivision, but, notwithstanding any applicable theory of mortgagees, shall not mean or refer to any mortgagee unless and until such mortgagee shall have acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (f) "Member" and/or "Members" shall mean and refer to all those Owners who are members of the Association as provided in Article IV hereof. The term "Member" is further defined to include and refer to the executors and administrators of any

Member, and all other persons, firms, or corporations acquiring or succeeding to the title of the Lot by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any other legal manner.

- (g) "Declarant" shall mean and refer to Stephens/Tingley, L.P., a Texas limited partnership. Unless the context clearly indicates otherwise, the term shall be deemed to include Declarant's successors and assigns, provided that no Owner shall ever be deemed to be a successor or assign, unless so stated in an instrument in writing executed by Declarant and recorded in the Official Records of Fort Bend County.
- (h) "Builder" and or "Builders" shall mean and refer to persons or entities who have purchased one or more Lots from Declarant for the purpose of constructing a residence thereon in accord with the Subdivision Plat and this Declaration, and their successors and assigns, but such term shall exclude any person upon whose Lot any person actually resides.

## ARTICLE II.

### Easements

Section 1. Existing Easements. The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and further establishes dedications, limitations, reservations, and restrictions applicable to the Subdivision. Further, Declarant and Declarant's predecessors in title have heretofore granted, created, and dedicated by several recorded instruments, certain other easements and related rights affecting the Subdivision. All dedications, limitations, restrictions, and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Subdivision are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed, or other conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Subdivision.

Section 2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the utilities, cable, drainage or street lights. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve, or otherwise create, at any time or from time to time, easements for public utility purposes (including, without limitation, gas, electricity, telephone, and drainage) in favor of any person or entity furnishing or to furnish utility services, including drainage, to the Subdivision, along and on either or both sides of any Lot line.

Section 3. Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed, or other conveyance shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, cable, electric light, electric power, telegraph or telephone way, or any pipes, lines, poles, or conduits on or in any utility facility or appurtenances thereto, construed by or under Declarant or its agents through, along, or upon any Lot or any part thereof to reserve said Lot or any other portion of the Subdivision, and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

Section 4. Installation and Maintenance. There is hereby created an easement upon, across, over, and under all of the property in the Subdivision for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, telephones, electricity, gas, cable, drainage, and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across, and under the property in the Subdivision within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this Section, no sewer, electrical lines, water lines, drainage facilities, or other utilities or appurtenances thereto may be installed or relocated on the property in the Subdivision until approved by Declarant or the Association's Board of Directors.

The utility companies furnishing service shall have the right to remove all trees and other plantings situated within the utility easements shown on the Subdivision Plat, and to trim overhanging trees and shrubs located on portions of the Subdivision abutting such easements to prevent interference with the operations of such utilities.

Section 5. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance, and other emergency vehicles, and to postal service and garbage and trash collection vehicles, and other service vehicles to enter upon the Subdivision in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Subdivision to render any service for which it is responsible as set forth in this Declaration.

Section 6. Underground Electric Service. An underground electric distribution system may be installed within the Subdivision, which, if installed, will be designated an Underground Residential Subdivision, and which underground service area shall embrace all Lots in the Subdivision. The Owner of each Lot in the Underground Residential Subdivision shall, at his own cost, furnish, install, own, and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the customer's structure to the point of attachment at such company's installed transformers or energized secondary junction



boxes, such point of attachment to be made available by the electric company at a point designated by such company, at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own, and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For as long as underground service is maintained in the Underground Residential Subdivision, the electrical service to each Lot herein shall be underground, uniform in character, and exclusively of the type known as single phase 120/240 volt, three (3) wire, sixty (60) cycle alternating current.

The electric company has installed (or will install) the underground electric distribution system in the Underground Residential Subdivision at no cost to Declarant (except for certain conduits, where applicable) upon Declarant's representation that the Underground Residential Subdivision is being developed for single family dwellings of the usual and customary type, constructed upon the Lots, designed to and built for sale to bona fide purchasers.

Section 7. Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers and the erection of fences along property lines. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants, or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

Further, neither the Declarant nor the supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them, or either of them, or their respective employees, servants, or assigns, to any sidewalks, driveways, fences, or any other object occupying any such easement or any portion thereof, as a result of any activity relating to the construction, maintenance, or repair of any facility in any such easement area. Nothing contained herein shall permit the construction of any building within any easement areas, which is hereby strictly prohibited.

### ARTICLE III.

#### Property Subject to This Declaration

Section 1. Description. The real property which is and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is the same tract of land described in the map or Plat recorded at Clerk's File No. 2004009 of the Official Public Records of Fort Bend County, Texas and is described in said map or plat as Arcott Place Section Two, a subdivision of 15.36 acres of land, being a partial replat of Arcott Park, Slide No. 744A, F.B.C.P.R., and a partial replat of Savage Acres Section One, Slide No. 1131B, F.B.C.P.R. in the B.B.B. & C. R.R. Survey, A-118, City of

Stafford, Fort Bend County, Texas (or any subsequent recorded plat thereof which is incorporated into the Subdivision).

Section 2. Mineral Exception. There is hereby excepted from the Subdivision and Declarant will hereinafter except from all its sales and conveyance of the Subdivision, or any part thereof, including the Lots and Common Areas, all oil, gas, and other minerals in, on, and under the Subdivision, but Declarant hereby waives, and will waive in each such conveyance, its right to use the surface of such land for exploration for or development of oil, gas, and other minerals.

Section 3. Additions to Existing Property. Additional lands may become subject to the scheme of this Declaration in the following manner:

- (a) So long as the Class B membership exists as defined by Article IV, Section 6, the Declarant shall have the unilateral right, privilege, and option, from time to time to annex any real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall be accomplished by filing in the Public Records of Fort Bend County, Texas a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Owners or Members, but shall require the consent of the owner of such property if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided herein. Declarant shall have the unilateral right to transfer to any other person the right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be a developer of at least a portion of the additional real property and that such transfer is memorialized in a written, recorded instrument executed by the Declarant. In the event that Declarant shall transfer to any other person the right, privilege and option to annex additional property as provided in this sub-paragraph, the Assignee of such right shall be deemed to be a successor and assign of Declarant as to such additional property.
- (b) Subject to the consent of the owner thereof, the Association may annex additional real property, following the expiration of the right in Section 3(a) of this Article, to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote (i) of Members representing a majority of the Class "A" votes of the Association present at a meeting duly called for such purpose and (ii) of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto. Annexation shall be accomplished by filing of record in the public records of Fort Bend County, Texas, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws of the Association dealing with regular or special meetings, as the case

may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 3(b) and to ascertain the presence of a quorum at such meeting.

Section 4. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties acquired under the terms of Section 3, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 5. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to subject additional real property to the terms of this Declaration pursuant to Subsection 3(a) of this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the real property desired to be affected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

#### ARTICLE IV.

##### The Association

Section 1. Organization. The Association has been organized and formed as a non-profit corporation under the laws of the State of Texas.

Section 2. Purpose. 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 Members.

Section 3. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 4. Directors. The Association shall initially act through a Board of Directors having not fewer than three (3) nor more than five (5) directors, which shall manage the affairs of the Association. The initial Directors, who need not be residents in the Subdivision, of the Association shall be selected by the Organizers. Each initial Director shall serve until his successor is duly elected and qualified as provided in the Articles of Incorporation of the Association and its By-Laws. Any vacancy, from whatever cause, occurring in the Board of

Directors during the initial term shall be filled by appointment made by the remaining Director or Directors. The person appointed by the remaining Director or Directors to fill such vacancy shall serve for the remainder of the initial term and until his successor is duly elected and qualified.

The Directors shall have the power to select one or more non-voting advisory directors from the residents of the Subdivision to serve for such periods of time as the Board of Directors shall deem appropriate, for the purpose of providing advice and counsel to the Board of Directors, provided that such advisory trustees shall have no right to act on behalf of the Association.

Section 5. Members. Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

Section 6. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all the Members of the Association, with the exception of the Declarant and the Builders. Class A Members shall be entitled to one vote for each Lot in the Subdivision in which they hold the interest required for membership by this Declaration or any Declarations of Annexation. When more than one person holds such interest or interests in any such Lot, all such persons shall be Members, and 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 such Lot.

Class B. The Class B Members shall be the Declarant and the Builders. The Class B Members shall be entitled to three (3) votes for each Lot in the Subdivision in which they hold the interest required for membership by this Declaration or any Declarations of Annexation; provided, that the Class B memberships shall cease and become converted to Class A memberships on the happening of whichever of the following events occurs earliest:

- (a) 75% of the Lots are deeded to Class A members;
- (b) On January 1, 2024; or
- (c) When Declarant records an instrument to such effect in the Official Records of Real Property of Fort Bend County, Texas.

From and after the happening of whichever of these events occurs earliest, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in the Subdivision in which it holds the interest required for membership by this Declaration.

Section 7. Suspension of Voting Rights. The Association shall have the right to suspend the voting right of any Owner and/or the right of any Owner to use the Common Area if:

- (i) such Owner is in default in the payment of any Assessment or other amount of money due to the Association for a period of forty-five (45) days after the due date thereof; or
- (ii) If such Owner has failed to comply with any of the restrictions contained herein or the rules and regulations of the Association, for a period of fifteen (15) days after written notice thereof from the Association; and
- (iii) In the event of a default in payment of Assessments, or failure to comply with the restrictions of this Declaration or rules and regulations of the Association, for an additional period not to exceed one (1) day from the date such default or violation is cured or rectified.

The Association's right to suspend voting rights shall not be exclusive, but shall be cumulative of, and in addition to, any and all other rights and remedies of the Association.

Section 8. Dissolution. Declarant and its successors and assigns have the power as long as the Class B membership exists to dissolve the Association at any time and for any reason in the sole discretion of Declarant and/or its successors and assigns.

## ARTICLE V.

### Assessments

Section 1. Annual Maintenance Fund. All funds collected by the Association from the Annual Maintenance Assessments provided for in Section 2 of this Article, together with all funds collected by the Association from the annual maintenance assessments imposed on the Lots in the Subdivision by all Declarations of Annexation, shall constitute and be known as the "Annual Maintenance Fund". The Annual Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members, and may be used for any and all of the following purposes, by way of illustration and not by way of limitation, to-wit: to promote the health, safety, recreation, and welfare of the Members; the installation, construction, erection, and relocation of improvements related to the enhancement and beautification of the common areas and common facilities in the Subdivision and any other areas provided by this Declaration and any Declarations of Annexation to be so enhanced, beautified, and maintained by the Association as a common expense to all Members in the Subdivision; for necessary maintenance of streets,

walkways, fountains, esplanades, parkways, sidewalks, lakes and vacant Lots in the Subdivision; collection of garbage and refuse; patrol and security services; fogging and spraying for insect control; street lighting maintenance; landscaping, mowing, removal of weeds and debris, the general maintenance of grass, shrubbery, flower beds and trees, the maintenance of walks, walkways, and all other things and purposes consistent herewith and/or desirable in the discretion of the Board of Directors of the Association in maintaining the character and value of the Subdivision; enforcement of the restrictions and covenants imposed on the Subdivision by this Declaration and all Declarations of Annexation; and for any and all other purposes which are, in the discretion of the Board of Directors of the Association, desirable in maintaining the value and character of the Subdivision for the common benefit of all the Owners in the Subdivision. The uses of the Annual Maintenance Fund described herein shall not be obligatory, but shall be at the sole discretion of the Board of Directors of the Association.

In the event Declarant shall designate common areas or facilities for the use and benefit of all the Owners in the Subdivision ("Common Areas") which are situated on property owned by Declarant (or affiliated or subsidiary entities) but which then has not been brought within the scheme of this Declaration, the Association shall have the right and authority to allocate and expend such amounts from the Annual Maintenance Fund for construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Areas as its Board of Directors shall determine, in its sole discretion. Every Member has a right and easement of enjoyment of any Common Area, which is appurtenant to the Member's title to a Lot. Common Areas cannot be mortgaged or conveyed without the consent of the owners of 66 2/3% of the Lots (excluding the Declarant). If ingress or egress to any residence on a Lot is through a Common Area, any conveyance or encumbrance of such Common Area is subject to the Owner's easement.

Further, if any Common Areas, whether situated on property within the Subdivision or on property then not subject to the scheme of this Declaration also are for the use and benefit of persons or entities other than the Owners in the Subdivision, the Association shall have the right and authority to enter into agreements with other persons or entities enjoying the use and benefit of such Common Areas (or their designee), in such instances and on such terms as its Board of Directors may deem appropriate and acceptable, obligating the Association to contribute, from the Annual Maintenance Fund, a ratable portion of the amounts necessary from time to time to provide for the construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Areas, and providing for other agreements relative to the use and enjoyment of such Common Areas (including limitations on the extent of the use and enjoyment thereof) by the various persons and entities entitled thereto.

The Board of Directors of the Association may, in its sole discretion, give one or more of the purposes set forth in this Section 1. preference over other purposes, so long as the funds expended therefore shall be a part of the appropriate maintenance fund for which they were charged and collected. It is agreed that all expenses incurred and expenditures and decisions made by the Board of Directors of the Association in good faith shall be binding and conclusive on all Members.

Section 2. Covenants for Assessments. Subject to the provisions set forth below in Section 3. and 4. relating to the rate at which the annual maintenance assessment imposed herein shall be paid on unimproved Lots and subject to the increases and decreases provided for in Section 5. below, each and every Lot in the Subdivision may be severally subjected to and impressed with an annual maintenance charge in the amount of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per annum per Lot (hereinafter referred to as the "Annual Maintenance Assessment"), which shall run with the land.

Each Owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his Lot and/or assessed against him by virtue of his ownership thereof, including the Annual Maintenance Assessment and all Special Assessments, as the same shall become due and payable, without demand. The charges and assessments herein provided for shall be a charge and a continuing lien upon each Lot, together with all improvements thereon, as hereinafter more particularly stated.

Each Annual Maintenance Assessment and each Special Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay the Annual Maintenance Assessment and/or the Special Assessment accrued, but no Member shall be personally liable for the payment of any Annual Maintenance Assessment or Special Assessment made or becoming due and payable after his ownership ceases. No Member shall be exempt or excused from paying any such charge or assessment by waiver of the use or enjoyment of the Common Areas, or any part thereof, or by abandonment of his Lot or his interest therein, or by his maintaining same at his own expense, as applicable.

Section 3. Unimproved Lots Owned by Declarant or Builders. Declarant and Builders shall pay fifty percent (50%) of the then existing Annual Maintenance Assessment for each Lot owned by them, unless and until a residential structure has been built thereon and the residence has been sold. Thereafter, commencing on the first day of the next succeeding calendar month, the full Annual Maintenance Assessment then assessed shall become applicable. If the Annual Maintenance Assessment on such Lots has been prepaid at said fifty percent (50%) of the full Annual Maintenance Assessment, then assessed for the portion of the calendar year remaining after the Annual Maintenance Assessment becomes applicable to such Lot, as herein provided, the then Owner of such Lot shall be obligated to pay to the Association, on the date the full Annual Maintenance Assessment becomes applicable, as herein provided, that prorata portion of fifty percent (50%) if the Annual Maintenance Assessment then assessed, which shall bear the same ratio to such fifty percent (50%) of such Annual Maintenance Assessment as the number of full calendar months remaining in such calendar year bears to twelve (12). It shall be the duty of each Builder to notify the Association at the time a residence has been substantially completed or sold and/or permitted to be occupied. The term "substantial completion" as used herein shall mean that the residence is ready for sale or occupancy, except for minor items which must be furnished,

completed, corrected, or adjusted. The term "Builder" for the purposes of this Declaration is defined as any person, firm, corporation, or other entity who is engaged in the business of building residential structures for sale or rental purposes, and not for his or its personal use or occupancy.

Section 4. The Annual Maintenance Assessments. The Annual Maintenance Assessments and the Supplemental Assessments provided for herein shall commence only if a majority of the month) fixed by the Board of Directors, if any, to be the date of commencement, shall be assessed for the balance of the first calendar year in which they are assessed, if they are assessed, and payable on the day fixed for commencement, or in equal monthly installments over the balance of the year, at the election of the Board of Directors of the Association. The assessments for each calendar year after the first year shall be due and payable in advance to the Association if a majority of the Board of Directors votes to assess the Assessment on January 1st of each year, or in twelve (12) equal monthly installments over such year, at the election of the Board of Directors of the Association, provided, however, that the following prorata portion of the maintenance assessments provided for herein shall be payable at the time set forth in the immediately following sentence. Upon the purchase of his Lot (as evidenced by the date of his term Contract of Sale or Deed, or his occupancy, whichever is earlier), each Member shall be obligated to pay to the Association a prorata portion of the applicable percentage (as determined pursuant to the terms hereof) of the Annual Maintenance Assessment then assessed on such Lot, which shall bear the same ratio to the applicable percentage of the Annual Maintenance Assessment as the number of full calendar months remaining in the year of purchase bears to twelve (12), and which shall be payable in full upon such purchase or in equal monthly installments over the balance of the year of purchase, as the Board of Directors of the Association may elect.

The Board of Directors of the Association may decrease or increase the amount of the Annual Maintenance Assessments provided for herein at any time and from time to time by the adoption of a resolution for such purpose, but no resolution increasing the assessments shall become effective prior to the expiration of ninety (90) days from the date of its adoption, and the Owner of each Lot shall, within thirty (30) days from such effective date, pay to the Association the proportionate part of such increase for the balance of the year in which such resolution is adopted; provided, however, that the amount of the Annual Maintenance Assessments shall never be in excess of the amount calculated by the following formula:

$$A_1 = \$100 * \left( \frac{CPI_2}{CPI_1} \right)$$

where,

$A_1$  = the maximum Annual Maintenance Assessment;



CPI<sub>2</sub> = the Consumer Price Index or its successor index, as published by the U. S. Department of Commerce, for the latest month available prior to the adoption of a resolution by the Board of Directors to increase the Annual Maintenance Assessment;

and,

CPI<sub>1</sub> = the Consumer Price Index or its successor index, as published by the U.S. Department of Commerce, for the month of February, 2003

unless and until the resolution of the Board of Directors updating such Annual Maintenance Assessment is ratified either (i) by the written assent of the holders of two-thirds (2/3) of the votes of the Membership of the Association if no meeting of the membership is held for ratification, or (ii) by the assent of two-thirds (2/3) of the votes in person or by proxy, of the Members at a special meeting of the membership of the Association called for this purpose and at which a quorum is present. The written assent or the vote of the applicable Members must be given prior to the effective date of the resolution of the Board of Directors. No increase in the maintenance assessments shall take effect retroactively. The Board of Directors may decrease the amount of the assessments without ratification by or assent of the Members of the Association.

Section 5. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the Annual Maintenance Assessment, if assessed, against each Lot to which it is to apply for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owners. Written notice of each assessment shall thereupon be sent to every Owner subject thereto.

Section 6. Special Assessments for Capital Improvements. In addition to the maintenance assessments authorized above, the Association may levy in any year, a special maintenance assessment applicable to that year only (a "Special Assessment"), for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

Section 7. Liens to Secure Assessments. The Annual Maintenance Assessments and the Special Assessments for capital improvements as hereinabove provided for, shall constitute and be secured by separate, valid and subsisting liens, hereby created and fixed, and which shall exist upon and against each applicable Lot and all improvements thereon, for the benefit of the

Association and all Members. Subject to the conditions that the Association be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to: -

- (a) All liens for taxes or special assessments levied by the city, county, or state government, or any political subdivision or special district thereof;
- (b) All liens securing amounts due or to become due under any Contract of Sale, mortgage, vendor's lien, or deed of trust filed for record prior to the date payment of any such charges or assessments become due and payable;
- (c) All liens, including, but not limited to, vendor's liens, deeds of trust, and other security instruments which secure any loan made by any lender to an Owner for any part of the purchase price of any Lot and the improvements thereon, if improved, when the same is purchased, or for any part of the cost of construction, repairing, adding to, or remodeling the residence and appurtenances situated on any Lot to be utilized for residential purposes.

Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing assessments which become due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges which become due prior to such foreclosure, be extinguished by any such foreclosure. Any holder of a security interest superior to the lien of the Association on any Lot is not required to collect assessments.

Section 8. Option for No Assessment. In the sole discretion of Declarant or its successors or assigns the Annual Maintenance Assessment as set out in this Article may be reduced or eliminated entirely for any period of time. A reduction or elimination of the Annual Maintenance Assessment for a period of time pursuant to this Section shall not affect the validity of any annual maintenance assessment charged after the period of time has expired.

## ARTICLE VI.

### Architectural Standards

Section 1. Purpose. In order to preserve the natural setting and beauty of the Subdivision to establish and preserve a harmonious and aesthetically pleasing design for the Subdivision and to protect and promote their value, the Subdivision, the Lots, and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article. Every grantee of any interest in the Subdivision by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article.

Section 2. Architectural Control Committee. An Architectural Control Committee is hereby established, which shall have exclusive jurisdiction over all construction, modifications, additions or alterations on any portion of the Lots in the Subdivision.

Plans and specifications showing the nature, kind, shape, color, size, materials, and location of original construction, shall be submitted to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures.

Section 3. Architectural Approval. To preserve the architectural and aesthetic appearance of the Subdivision, no construction improvements, or modifications, additions, or alterations to existing improvements, shall be commenced or maintained by any Owner other than Builder or Declarant, with respect to any other portion of the Subdivision, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, basketball goals, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, and burglar bars or other decorative appurtenances, nor shall any exterior addition to or change or alteration therein, whether or not attached to the main structure, be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Architectural Control Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet above ground and other significant vegetation) on such Lot showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to the compliance of such plans and specifications with such design guidelines (the "Design Guidelines") as may be published by the Architectural Control Committee from time to time, including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Control Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved." The Architectural Control Committee shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally-approved color scheme, or to rebuild in accordance with originally-approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired. The Architectural Control Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

Following approval of any plans and specifications by the Architectural Control Committee, representatives of the Architectural Control Committee shall have the right, but not the obligation during reasonable hours to enter upon and inspect any Lot, or any improvements

with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved and are being complied with. In the event the Architectural Control Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Control Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the Architectural Control Committee fails to approve or disapprove in writing any proposed plans and specifications within sixty (60) days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with the scheme of the development as set forth in this Declaration. Upon approval of plans and specifications, no further approval under this Article shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are altered or changed. Initial approval of Builder's Plans shall remain in effect until such time as Builder has completed homes on all lots owned by Builder in Subdivision. Refusal of approval of plans and specifications may be based by the Architectural Control Committee upon any ground which is consistent with the objects and purposes of this Declaration as defined in Design Guidelines which may be promulgated by the Architectural Control Committee from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

Section 4. Limitation of Liability. The Declarant, the Association and the Architectural Control Committee, as well as their agents, employees, or authorized representatives, shall not be liable to any Owner or to any other party for any loss, claim, or demand asserted on account of their administration of their duties pursuant to this Declaration, unless otherwise expressly provided elsewhere herein.

No approval of plans and specifications and no publication of minimum standards and specifications shall ever be construed as representing or implying that such plans and specifications and published standards will, if followed, result in a properly designed or constructed residence; and same shall in no event be construed as representing that any residence constructed in accordance therewith will be built in a good, workmanlike manner.

The acceptance of a deed or other conveyance of a Lot shall be deemed a covenant and agreement on the part of the Owner, his heirs, successors, and assigns, that the Declarant, the Association, and the Architectural Control Committee, their agents, employees, and representatives; shall have no liability hereunder, except as specified herein or due to gross negligence or willful misconduct.

Section 5. Committee Membership. The Architectural Control Committee shall be initially composed of Carl J. Stephens, Samir J. Foteh and Russell C. Jones, who, may designate a representative or representatives to act for them. The term "Architectural Control Committee", as used herein, shall refer to the individuals named above, their assignee as permitted herein, or

the Committee's designated representative(s). In the event of death or resignation of any member or members of the Architectural Control Committee, the remaining member or members shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full right, authority, and power to carry out the functions of the Architectural Control Committee as provided herein, or to designate a representative with like right, authority and power.

Section 6. Transfer of Authority to the Association The duties, rights, powers, and authority of the Architectural Control Committee may be assigned at any time, at the option of a majority of the members of the Committee, to the Board of Directors of the Association, and from and after the date of such assignment, and the acceptance thereof by such Directors, the Board of Directors of the Association shall have full right, authority, and power, and shall be obligated, to perform the functions of the Architectural Control Committee as provided herein, including the right to designate a representative or representatives to act for it.

Section 7. Dissolution of Association. If the Association is dissolved pursuant to Article IV, Section 8 of this Declaration, the Architectural Control Committee shall immediately cease to exist and any provisions in this Declaration requiring any Owner to seek approval from the Architectural Control Committee shall no longer be required.

Section 8. Minimum Construction and Maintenance Requirements. The following are minimum construction requirements which must be complied with in the erection and maintenance of improvements on the Lots, together with any additions or alterations thereto:

- (a) Only new construction materials (except for used brick) shall be used and utilized in constructing any structures situated on a Lot. All residential structures situated on any Lot shall have not less than fifty percent (50%) brick construction, at the discretion of the Architectural Control Committee, on the exterior wall area (excluding windows, doors, garage doors), unless other types of materials are expressly approved by the Architectural Control Committee. The masonry shall be of the type and the color as approved by the Architectural Control Committee, or any reasonably accepted substitutes therefor. Any other exterior materials must be stained or painted with certain colors approved by Architectural Control Committee.
- (b) All exterior construction of the primary residential structure, garage, porches, and any other appurtenances or appendages of every kind and character on any Lot (including, but not limited to, any underground watering system) and all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work completed, all interior wall, ceiling, and doors completed and covered by paint, wallpaper, paneling, or the like, and all floors covered by wood, carpet, tile, or other similar floor covering) shall be completed not later than six (6) months

following the commencement of construction, unless delay has been caused by a *force majeure*. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set.

- (c) Driveways shall be constructed in accordance with the regulations of the City of Stafford and/or any other authorized governmental entity.
- (d) A concrete sidewalk will be constructed in accordance with the regulations of the City of Stafford and/or any other authorized governmental entity.
- (e) No window or wall type air conditioners shall be permitted to be used, placed, or maintained on or in any building in any part of the Subdivision; provided, however, that window or wall type air conditioners may be used in any authorized building detached from the main residence if such air conditioner is not visible from any point six feet above any public street.
- (f) Each house built on the Lots shall contain all gas appliances required by Declarant's contract with the gas company. In the event that the house does not use the minimum gas appliances required by Declarant's contract with the gas company, a non-utilization fee is charged by the gas company. Owner of such Lot shall be responsible for the payment of such fee to the extent same results from the non-use of gas by Owner.
- (g) Landscaping shall be done in the front of all newly constructed residential structures at the time the residential structure is being completed and before occupancy. The landscaping shall include fully sodded front and side yards, two (2) trees (minimum three (3) inches in diameter for pine or two (2) inches in diameter for hardwood), and hedges around the front and wrapping the corners of the house. Builders shall maintain the lawn and landscaping until each Lot is sold.
- (h) No structure situated on any Lot shall have wood shingle roofs.
- (i) No antenna for transmission or reception of television signals, radio signals, citizen band signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot, except those (1) which are located totally within the residence situated on said Lot, or (2) which (a) do not extend more than six feet above finished grade elevation and (b) are not visible from any other Lot, Common Area or street when viewed from a point six feet above finished grade elevation or (3) if the previous two options would impair the Lot Owner's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services ("Devices"), then the Devices shall be erected, used and maintained in the place where the Devices are least visible from any Lot (other than

the Lot on which the Devices are located), Common Area or Street but where reception is not impaired. No television, radio or citizen band signals, nor any other form of electromagnetic radiation shall be permitted to originate from any Lot which may interfere with the reception of television or radio signals of any other Lot in the Subdivision.

- (j) No solar panels will be allowed without specific written approval by the Architectural Control Committee.
- (k) Each Lot in the Subdivision shall be graded and appropriate drainage facilities installed to provide for drainage from the rear of each Lot to the street adjacent to the Lot. The plans and specifications for each residence shall include specifications for the manner and method of such drainage. Said system shall meet Federal Housing Authority requirements and be completed prior to the occupancy of the residence of the Lot, and the Owner shall do nothing that will interfere with such drainage, and shall maintain such at all times for the purpose for which it was constructed.
- (l) No flagpole shall be permanently erected on any Lot unless written approval therefor has been obtained from the Architectural Control Committee excluding temporary flagpoles associated with model homes.

Notwithstanding the foregoing, if any applicable construction standard is imposed by any governmental authority, the governmental standard shall apply unless (i) the standard set forth in this Section is more stringent and (ii) application of the standard set forth in this Section does not violate such governmental standard, in which case the standard set forth in this Section shall apply. It shall be the obligation of each Owner to maintain his Lot according to the standards set forth in this Section. In the event that improvements on the Lot deteriorate or are destroyed to the degree that they would no longer satisfy the requirements set forth in this Article VII if they were newly constructed, the Owner shall thereupon rebuild, replant or take such other action as shall be necessary to bring his Lot into compliance with the provisions hereof.

Section 9. Size of Residence. No residential structure erected on any Lot shall have more than two (2) stories. The ground floor area, exclusive of open porches and garages, shall not be less than 1,300 square feet for a one (1) story home. The ground floor area plus the upper floor area of a one and one-half (1 ½) or two (2) story home shall not be less than 1,500 square feet.

Section 10. Building Location. The building setback lines for each Lot shall be as following:

- (a) Front Building Setback. No structure shall be located between the building setback lines shown on the Subdivision Plat and the street. For those Lots which do not have a building setback line specified on the Subdivision Plat, no structure shall

1,42367

be located thereon nearer to the front Lot line than twenty five (25) feet therefrom, unless such minimum setback is waived in writing by the Architectural Control Committee to reasonably allow for proper orientation and construction of the residential structure on the Lot.

- (b) Rear Building Setback. No main residential building, nor any part thereof shall be located nearer to the rear Lot line than (i) the interior line of the utility easement across the back of the Lot as shown on the Subdivision Plat or (ii) the rear setback line across the back of the Lot, if any, as shown on the Subdivision Plat, whichever is further from the rear Lot line.
- (c) Side Building Setback. No residential building, nor any part thereof, shall be located nearer than five (5) feet to the side Lot line. No garage, nor any part thereof, shall be located nearer than five (5) feet from the side Lot line; provided that, on corner Lots, no garage which faces the side Lot line shall be nearer than twenty (20) feet to such side Lot line. Notwithstanding the foregoing, no residential building, or any part thereof, shall be located on any utility easement shown on the Subdivision Plat.

Unless otherwise approved in writing by the Architectural Control Committee, each main residential structure will face the front of the Lot. For the purpose of this Declaration, the front Lot Line of each Lot shall be the property line having the shortest dimension abutting a street.

Each garage shall be provided with driveway access across the front of the Lot to the street in front of the Lot, except corner Lots which may have driveway access from the side of the Lot to the street.

The Architectural Control Committee shall have absolute discretion to determine the orientation and location of the front elevation of the residential structure with respect to the front building setback line, and may require, in its sole discretion, that such front elevation be situated on or a specified distance behind such front building setback line.

Section 11. Walls, Fences, and Hedges. No walls, fences, or hedges shall be erected or maintained nearer to the front Lot line of any Lot, than the building setback lines as shown on the Subdivision Plat or as provided for in this Section. Any rear or side fences and walls must be not less than six (6) feet nor more than eight (8) feet in height. The foregoing provisions for side and rear fences or walls may be altered upon written approval of the Architectural Control Committee.

Fences shall be of wood, or other materials approved in writing by the Architectural Control Committee. No chain link fences shall be permitted on any Lot.

The Architectural Control Committee may at any time and from time to time promulgate rules and regulations pertaining to fencing, which may include such matters as height, location,



type and maintenance, and in such event said promulgated rules and regulations shall be as effective as if said matters were specifically set forth in this Declaration and all Declarations of Annexation.

Ownership of any wall, fence, hedge or other barrier erected on a Lot by Declarant or a builder shall pass with title to such Lot and it shall be the Owner's responsibility to maintain said fence thereafter. In the event of default on the part of such Owner of any Lot in maintaining said fence and such failure continuing after ten (10) days written notice thereof, Declarant or its successors or assigns or the Association may, at its option, without liability to any Owner or occupant in trespass or otherwise, enter upon said Lot and cause said fence to be repaired or maintained or to do any other thing necessary to secure compliance with this Declaration or any Declarations of Annexation, so as to place said fence in a satisfactory condition, and may charge the Owner of such Lot for the cost of such work. The Owner agrees by the purchase of such Lot to pay such statement immediately upon receipt thereof.

In the event of joint ownership, each owner shall be jointly and severally liable for the payment of his proportionate share of any such statement. Each such charge, together with interest thereon at the rate of ten percent (10%) per annum and reasonable costs and collection shall be a charge and continuing lien upon such Lot, as well as the continuing personal obligation of the Owner of such Lot at the time of such charge.

The lien securing such charges shall be second, subordinate and inferior to all liens, present and future, given, granted and created by or at the instance of 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 improvement or any such Lot.

No hedge or shrub shall obstruct sight lines at elevation between two (2) and six (6) feet above the streets on any lines and a line connecting same at points twenty-five (25) feet from the intersection of the street curbs. All trees shall be so maintained so as to comply with this provision; that is, no limbs, foliage, or other parts thereof shall obstruct said sight lines at said elevations.

Section 12. Exceptions. Notwithstanding the foregoing provisions of this Article, Declarant shall have the exclusive right to (1) make exceptions without being in violation herein, to one or more use restrictions herein; and (2) erect, place and maintain, or permit one or more Builders to erect, place and maintain, on their respective Lots such facilities (including, but not limited to, offices, temporary construction trailers, storage areas, model homes and other units, flagpoles and signs) as in Declarant's sole discretion may be reasonable or convenient to improve or enhance the salability of the Subdivision or any Lots therein.

## ARTICLE VII.

### Building and Use Restrictions

Section 1. Residence Buildings. No building or other structure shall be built, placed, constructed, reconstructed, or altered on any Lot other than for a single family dwelling designed for use as a single family Home, including, without limitation, a garage and bona fide servants quarters. No structure shall be occupied or used until the exterior construction thereof is complete. Each single family residence situated on a Lot shall have a garage for not less than two (2) nor more than three (3) automobiles.

The garage doors shall be kept closed at all times except upon entering and exiting of automobiles. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

Section 2. Single Family Residential Use. Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. No owner or other occupant shall use or occupy his Lot, or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single family residence for the Owner or his tenant and their families and domestic servants employed on the premises. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for duplex apartments, garage apartments or other apartment use.

No Lot shall be used or occupied for any commercial business, trade, or professional purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not. A single house or any lot may be leased in its entirety to a single family, but may not be subleased or leased in part to any other parties.

Section 3. Temporary and Other Structures. No structure of a temporary character, no trailer, mobile, modular or prefabricated home, tent, shack, barn, or any other structure or building, other than the residence to be built thereon, shall be placed on any Lot, either temporarily or permanently, and no residence house or other structure appurtenant thereto, shall be moved upon any Lot from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit Builders to erect, place and maintain, such facilities in and upon properties in the Subdivision as in its sole discretion may be necessary during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements in the Subdivision. Such facilities may include, but not necessarily be limited to, temporary office buildings, storage areas, signs, portable toilet facilities and sales offices.

Declarant and Builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales operation in the Subdivision, but in no event, shall a Builder have such right for a period in excess of six (6) months from the date of the sale and closing of his last residence in the Subdivision to a Buyer.

Section 4. Noxious or Offensive Activity. No noxious or offensive activity shall be carried on or permitted upon any Lot or upon the common areas nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. The Board of Directors of the Association shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. No trucks larger than three-quarters of a ton, motor vehicles not currently licensed, boats, trailers, campers, and motor or mobile homes shall be permitted to be parked on any Lot so as same may be seen from any street, or on any street; except passenger cars and trucks equal to or less than three-quarters of a ton may be parked on the street in front or on the side of the Lot for a period not to exceed twelve (12) hours in any twenty-four (24) hour period. No repair work, dismantling, or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway or any portion of the common areas. The use or discharge of firearms, firecrackers, or other fireworks in the Subdivision is prohibited. No motor bikes, motorcycles, motor scooters, "go carts", or other similar vehicles shall be permitted to be operated in the Subdivision, if, in the sole judgment of the Board of Directors of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance. No exterior speaker, horn, whistle, bell or other sound device, except security devices installed in accordance with approved specifications, shall be located, used or placed on any Lot. Within thirty days of completion of use of any residence as a model home, a Builder shall remove any temporary features attributable to the use of such residence as a model home and shall bring such residences into full compliance with this Declaration.

Section 5. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the ordinances of any City or other jurisdiction having authority, laws of the State of Texas, or laws of the United States, or of the public health, sanitary, building, or fire codes or regulations relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 6. Signs. Except for signs, billboards, or other advertising devices displayed by Declarant or any Builder acting under the authority of Declarant for so long as Declarant or any successors or assigns of Declarant to whom the rights of Declarant under this Section are expressly transferred, shall own any portion of the Subdivision, no sign of any kind shall be displayed to the public view on any Lot or the common areas, except;

- (a) Builders may display one (1) sign if not more than five (5) square feet on a Lot to advertise the Lot and any residential structure situated thereon for sale during the sales and/or construction period; and

- (b) Any Owner may display one (1) sign if not more than five (5) square feet on a Lot improved with a residence for sale or rent.

Declarant or its agent shall have the right to remove any sign not complying with the provisions of this Section, and in so doing, shall not be liable and is expressly relieved of any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 7. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot or on any portion of the common areas, except that dogs, cats, and other common household pets (not to exceed two (2) animals) may be kept, but they shall not be bred or kept for commercial purposes. No animals shall be allowed outside of the residence and the rear yard thereof unless on leash and attended by the Owner or his designee.

Section 8. Removal of Dirt. The digging or the removal of any dirt from any Lot or from any portion of the common areas is prohibited, except as necessary in conjunction with landscaping or construction or improvements thereon.

Section 9. Garbage and Refuse Storage and Disposal. All Lots and the common areas shall at all times be kept in a healthful, sanitary and attractive condition. No Lot or any part of the common areas shall be used or maintained as a dumping grounds for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with sanitary, tightly fitting covers or lids, which shall be maintained in a clean and sanitary condition and screened from public view. No Lot shall be used for 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 on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored out of view of the street.

Section 10. Owner's Maintenance. Each Owner and occupant, including lessees, shall at all times be obligated to maintain, repair, replace and renew or cause to be maintained, repaired, replaced or renewed all improvements on a Lot or Tract so owned or occupied (and the area between the boundary lines of adjacent property and adjacent Streets if such area is not otherwise maintained), so as to keep same in a clean, sightly, safe and first-class condition consistent with its original intended appearance. Unless expressly assumed by the Association, an Owner's maintenance obligation shall include, but not be limited to: the maintenance of all visible exterior surfaces of all buildings and other improvements; the prompt removal of all paper, debris, refuse; the removal and replacement of dead and diseased trees and plantings from all areas of its property and all snow and ice from paved areas; the repair, replacement, cleaning and revamping of all signs and lighting fixtures; the mowing, watering, fertilizing, weeding, replanting and replacing of all approved landscaping; and, during construction, the cleaning of dirt, construction debris and other construction related refuse from Streets and storm drains and inlets.

If any improvement is damaged or destroyed, the Owner shall diligently proceed to restore such improvement to the condition existing prior to such damage or destruction or, in the alternative, raze and remove such improvement and landscape the property pursuant to a landscaping plan approved by the Architectural Control Committee.

Section 11. 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 12. Drainage. Each Owner by his purchase of a Lot agrees for himself, his heirs, successors or assigns that he will not in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots; and he will make adequate provisions for proper drainage of his Lot. For the purposes hereof, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Subdivision, including landscaping of Lots, by the Declarant or his assigns.

Section 13. Default. In the event of default on the part of the Owner or occupant of any Lot in observing the requirements of this Article, or any of them, such default continuing after ten (10) days written notice thereof, the Association or the Declarant, its successors and assigns, may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause such maintenance to be performed or do any other thing necessary to secure compliance with this Declaration in order to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work by submitting to such Owner or occupant a statement setting forth the nature and cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of such Lot to pay such statement immediately upon receipt thereof. Each such charge, together with interest thereon at the rate of ten percent (10%) per annum and reasonable costs of collection, including but not limited to attorney's fees, shall be a charge and continuing personal obligation of the Owner of such Lots at the time of such charge. Such charge, if not immediately paid in full by the Owner of such Lots, shall constitute and be secured by a separate, valid lien upon the Lot and all improvements thereon, for the benefit of the Association and all Members. The lien securing such charge shall be second, subordinate and inferior to all liens, present and future, given, granted and created by or at the instance or 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 improvement of any such Lot.

In addition to the foregoing right to enter upon a Lot, the Association and/or any Owner has the right to take such other actions as it believes may remedy, correct or terminate any violation of these restrictions, including but not limited to, filing a lawsuit. Neither the Association nor the Declarant shall have any liability or responsibility for exercising any of the rights or remedies granted herein, and any expenses thereof shall be borne by the Owner of the Lot upon which the violation occurred, and shall be reimbursed to the Association or Declarant upon

request, and if not immediately paid shall become part of the Assessment for such Lot and shall be secured by the same lien granted herein for such Assessment.

## ARTICLE VIII.

### General Provisions

Section 1. Duration. The covenants and restrictions of this Declarant shall run with and bind the Subdivision, and shall inure to the benefit of and be enforceable by Declarant, the Association or the Owner of any land subject to this Declaration or any Declaration of Annexation, their respective legal representatives, heirs, successors, and assigns, for an initial term commencing on the effective date hereof and ending December 31, 2023 (the "Initial Term").

Upon the expiration of such Initial Term, all of the covenants and restrictions of this Declaration (as changed, if changed), shall be automatically extended for successive periods of ten (10) year extension periods ("Renewal Terms"); provided, however, that not less than ninety (90) days prior to the first day of any Renewal Term the covenants and restrictions contained herein may be changed or terminated by an instrument signed by the then Owners of not less the sixty-six and two thirds percent (66 2/3%) of all the Lots in the Subdivision and properly recorded in the appropriate records of Fort Bend County, Texas.

Section 2. Enforcement. The Association, as a common expense to be paid out of the Annual Maintenance Fund, or any Owner at his expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservation, liens, charges, assessments, and all other provisions set out in this Declaration. Failure of the Association or of any Owner to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any subsequent breach or default.

Section 3. Attorney's Fees. In the event Declarant, the Association shall retain an attorney to enforce any provision of this Declaration, then the Owner of the Lot as to which enforcement is sought shall pay, in addition to all other relief, all reasonable attorney's fees, court costs and other expenses incurred by Declarant, the Association, or their agents or representatives, in the enforcement of this Declaration.

Section 4. Amendment. This Declaration may be amended in whole or in part by the Owners of 66-2/3% of the lots as evidenced by a document in writing bearing each of their signatures, with such document to be effective when recorded in the offices of the County Clerk of Fort Bend County, Texas or other place as may be required by law at the time such document is recorded.

Section 5. Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part hereof shall be susceptible of more than one or conflicting interpretations, then the

interpretations which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 6. Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

Section 7. Titles. The titles of this Declaration and of Articles and Sections contained herein are 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 8. Successors in Title. The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of Declarant and the Association and all Owners and occupants of any Lot and their respective heirs, devisees, successors, legal representatives and assigns.

Section 9. Notices. Any notice required to be sent to any Member or 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 a Member or Owner of the records of the Association at the time of such mailing.

Section 10. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

Section 11. Severability. Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, or any part thereof, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

## ARTICLE IX.

### DECLARATION OF ANNEXATION

Declarant hereby annexes the subdivision and imposes upon the subdivision the covenants, conditions and restrictions as set forth in the Principal Declaration and any amendments thereto only to the extent that Owners herein and the Declarant herein shall be members of the Association with equal voting rights as are "Owners" and the "Declarant" as defined in the Principal Declaration, and only for such purposes shall this Declaration be deemed to be a "Supplemental





BEYER CONSTRUCTION, L.L.P.

By: Charles A. Beyer  
Name: CHARLES A BEYER  
Title: President

THE STATE OF TEXAS

§  
§  
§

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Charles A. Beyer, President of Beyer Construction, L.L.P., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL this the 16<sup>th</sup> day of April, 2004.

AS PER ORIGINAL



Judith Hilliard  
NOTARY PUBLIC, STATE OF TEXAS

BROWN AND GAY ENGINEERS, INC.

By: [Signature]  
Name: Harry L. Milberger  
Title: Vice President

THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

§

BEFORE ME, the undersigned authority, on this day personally appeared Harry Milberger, Vice President of Brown and Gay Engineers, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL this the 14 day of April, 2004.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

STERLING BANK

By: \_\_\_\_\_  
Name: Richard Booker  
Title: CEO

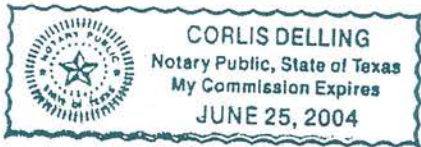
AS PER ORIGINAL

THE STATE OF TEXAS  
COUNTY OF ~~HARRIS~~ It Bend

§  
§  
§

BEFORE ME, the undersigned authority, on this day personally appeared Richard Booker CEO of Sterling Bank, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL this the 12th day of April, 2004.



Corlis Delling  
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING, RETURN TO:

THE HOLOWAY JONES LAW FIRM, P.L.L.C.  
ATTENTION: RUSSELL C. JONES  
407 JULIE RIVERS DRIVE  
SUGAR LAND, TEXAS 77478

THIS DOCUMENT WAS  
FILED BY AND  
RETURNED TO:  
CHICAGO TITLE - HOLD

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

Dr. Dianne Wilson

2004 May 04 03:20 PM

2004053075

EG \$77.00

Dianne Wilson, Ph.D. COUNTY CLERK  
FT BEND COUNTY TEXAS

Declaration" as defined in the Principal Declaration, all as a part of the Declarant's uniform plan or scheme for the development of the Subdivision.

ARTICLE X.

FHA/VA Approval

Notwithstanding any other provision of this Declaration, as long as there exists a Class B membership in the Association, the following actions will require the prior approval of the United States Department of Housing and Urban Development or the Veterans Administration: dedication of common areas, mortgaging of common areas, amendment of this Declaration and annexation of additional properties not specifically permitted herein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration to be effective this the 8<sup>th</sup> day of April, 2004.

STEPHENS/TINGLEY, L.P. ("Declarant")

By: Stephens/Tingley and Associates, Inc.,  
General Partner

By: [Signature]  
Carl J. Stephens, President

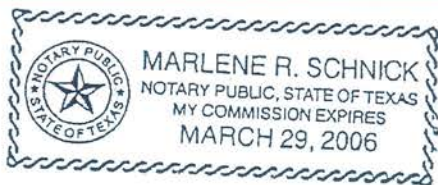
THE STATE OF TEXAS

§  
§  
§

COUNTY OF FORT BEND

BEFORE ME, the undersigned authority, on this day personally appeared Carl J. Stephens, President of Stephens/Tingley and Associates, Inc. which is the General Partner of Stephens/Tingley, L.P., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL this the 8<sup>th</sup> day of APRIL, 2004.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS