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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR THE SOMERCREST SUBDIVISION
MIDLOTHIAN, TEXAS**

GF# 146822

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EXHIBITS:

Exhibit A -	Legal Description	(Estates of SomerCrest)
Exhibit B -	Preliminary Plat	(showing location of Estates of SomerCrest, Parks of SomerCrest and Villas of SomerCrest)

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR THE SOMERCREST SUBDIVISION**

This DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR THE SOMERCREST SUBDIVISION (the "Declaration") is made effective as of the 25th day of March, 2015, by Estates of SomerCrest, Ltd. a Texas limited partnership (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the owner of certain real property in Ellis County, Texas, which is more particularly described on Exhibit "A" attached hereto and made part hereof.

Declarant intends to develop on lands, including, but not limited to, the real property described above, a development to be known as Estates of SomerCrest ADDITION (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impasse mutually beneficial restriction under a general plan of improvement for the benefit of all owners of residential property within the Development by the recording of this Declaration and amendments thereto, Declarant desires to provide a flexible and reasonable procedure of the overall development of the Development. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected tho this Declaration and certain other properties described in this Declaration.

Declarant has caused the Association to be formed as a Texas non-profit corporation to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined). Declarant hereby declares that all of the real property described above shall be held, sold, and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The Covenants, Conditions and Restrictions set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner his heirs, grantees, distributees, legal representatives, successors, and assigns, and to the benefit of the Association.

ARTICLE I
DEFINITIONS

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

- 1.01 Association. "Association" means Somercrest HOA, Inc., a Texas non-profit corporation organized under the Texas Non-Profit Corporation Act, its successors and assigns.
- 1.02 Board. "Board" means the Board of Directors of the Association.
- 1.03 Bylaws. "Bylaws" means the Bylaws of the Association.
- 1.04 Commencement Date. "Commencement Date" means the date on which the first Residence (as hereinafter defined) is sold to a third party other than Declarant or the builder of such Residence.
- 1.05 Common Property. "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyments of the Owners, as set out in Article II herein.
- 1.06 Declarant. "Declarant" means Estates of SomerCrest, Ltd., a Texas limited partnership qualified to do business in the State of Texas, and its successors and assigns, provided any such successors or assigns shall acquire or own for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A," or the real property which is intended to become part of the Development and/or is annexed as part of the Development, and provided further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A" attached hereto, and which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and posers of the "Declarant" hereunder at any one time.
- 1.07 Development-Wide Standard. "Development-Wide Standard" shall mean the standard of conduct, maintenance or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board and by committees required or permitted to be established pursuant to the Declaration and Bylaws. Such determination, however, must consistent with the Development-Wide Standard originally established by the Declarant.
- 1.08 Lot. "Lot" means any parcel of land shown upon a subdivision plat recorded in the Plat Records of Ellis County, Texas, covering any portion of the Property; provided, however, that no portion of the Common Property shall ever be a Lot except as provided in Section

2.05.

- 1.09 Member. "Member" means any member of the Association.
- 1.10 Membership. "Membership" means the collective total of all Members of the Association.
- 1.11 Occupant. "Occupant" shall mean any person occupying all or any portion of a Residence located within the development for any period of time, regardless of whether such Person is a tenant, guest, or the Owner of the Residence.
- 1.12 Owner. "Owner" means the record owner (including Declarant), whether one of more persons or entities, of fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.
- 1.13 Parcel. "Parcel" shall mean and refer to separately designated residential areas comprised of various types of housing initially or by annexation made subject to this Declaration. For example, and by way of illustration and not limitation, a condominium development, a townhouse development, an apartment complex, and a single family detached home subdivision may all be designated as separate Parcels. If separate parcel status is desired for a given residential area, the Declarant shall designate such area as a Parcel in an amendment to this Declaration. In the absence of specific designation of separate Parcel status, all property made subject to his Declaration shall be considered a part of the same Parcel. The Board may also grant parcel status to any area if so requested in writing by the Owners holding at least seventy-five (75%) of the total votes entitled to vote thereon in such area.
- 1.14 Property. "Property" means that certain real property described on Exhibit "A," attached hereto together with such additional real property as may be subjected to the provisions of this Declaration in accordance provisions of Article X hereof.
- 1.15 Residence. "Residence" shall mean a Structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A structure situated on a Lot shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a prerequisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other than the builder thereof unless the builder intends to use the structure as his or her primary residence. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a certificate of occupancy for the Residence.
- 1.16 Restriction. "Restriction" means all covenants, restrictions, easements, chargers, liens and other obligations created or imposed by this Declaration.

1.17 Structure. "Structure" means:

- (a) anything or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, dock, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;
- (b) any excavation, grading, fill ditch, diversion dam or other thing or other device which affects or alters the natural flow of surface waters from, upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and
- (c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.17 applies to such change.

ARTICLE II
COMMON PROPERTY

2.01 Conveyance of Common Property.

- (a) The Declarant may from time to time convey to the Association or grant easements to the association, at no expense to the Association and in accordance with this Section, real and personal property for the common use and enjoyment of the Owners of Residences (such real and personal property is hereinafter collectively referred to as "Common Property") and, to the extent set forth in this Declaration, the general public. The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.
- (b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for access, ingress and egress of both vehicular traffic and pedestrians, as well as for landscaping and security purposes. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property (or the use to be made thereof) contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 2.01 at any time prior to conveyance of such Common Property to the Association.
- (c) In addition to the property described in subsection (b) of this Section 2.01, the Declarant may convey to the Association in accordance with this Section 2.01 such other real and personal property as the Declarant may determine to be necessary or

proper for the completion of the Development.

- (d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the association or to any municipality or other governmental body, agency or authority.

2.02 Right of Enjoyment. Every Owner of a Residence shall have a right and easement to use the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit persons who are not Owners of Residences to use part or all of the Common Property subject to such limitations and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Section 2.02 is subject to suspension by the Association as provided in Sections 2.03 (e) and 3.05.

2.03 Rights of the Association. The rights and privileges conferred in Section 2.02 hereof shall be subject to the right, and where applicable, the obligation, of the Association acting through the Board to:

- (a) Promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;
- (b) Borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed of trust, mortgage or other security interest any or all of the Association's property including Common Property and revenues from assessments, user fees and other sources; and provided, however, that, during the period when the Declarant has the right to appoint members of the Board, the association shall not grant or convey to anyone any mortgage, deed of trust or other security interest on or in Common Property constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association;
- (c) Grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;
- (d) Dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association

and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

- (e) Suspend, pursuant to Section 3.05, the voting rights of any Member and the right of enjoyment granted or permitted by Section 2.02;
- (f) Sell, lease or otherwise convey all or any part of its properties and interests therein;
- (g) Enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;
- (h) Maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads for Ellis County, Texas.
- (i) Contract on behalf of all Lots for garbage and rubbish pickup, and to charge the Owner of each lot for his prorata share of the cost thereof, such prorata share to be determined by dividing the number of Lots being served into the total cost of providing such garbage and rubbish pickup. If the Association so elects, the charge to each Owner for garbage and rubbish pickup shall be in addition to the Assessments described in Article IV hereof; and
- (j) Contract on behalf of all Lots for security and/or emergency medical ambulance services, and to charge the Owner of each Lot for his prorata share of the cost thereof, such prorata share to be determined by dividing the number of Lots being served into the total cost of providing such security and/or emergency ambulance service. If the Association so elects, the charge to each Owner for security and/or emergency medical ambulance service shall be in addition to the Assessments described to Article IV hereof.

2.04 Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association and the property shall therefore be Common property to be maintained by the Association for the benefit of all its Members.

2.05 Types of Common Property. At the time of the conveyance of any real property or grant of

easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of the Members, be used for any different purpose or purposes without the prior written consent of the Declarant.

2.06 Delegation of Use. Any Owner may delegate to the members of his family or his tenant who reside on a Lot, in accordance with the bylaws, his right to use and enjoy the Common Property.

2.07 Maintenance and Other Common Expenses. The Association shall maintain and keep in good repair the Common Property including, without limitation, all landscaping and improvements situated on the Common Property. In addition to the maintenance of the Common Property, the Association shall have the obligation to maintain, repair and replace, subject to any insurance then in effect, all private drives (as identified by recorded plat or otherwise) and not reserved for the exclusive use of each individual Owner, including, without limitation, all grass, trees, shrubbery or other plantings, sidewalks, fences, walls, street lights, benches, trash receptacles, irrigation systems, informational and directional street signage installed by Declarant, security gates, and any other landscaping or improvements located along or within such private drives, and other property Declarant designates as a maintenance obligation of the Association by an amendment to this Declaration. In addition, the Association shall maintain, repair, and replace, to the extent permitted by the applicable governmental authority, subject to any insurance then in effect, all grass, trees, shrubbery or other plantings, sidewalks, fences, walls, street lights, solar panels, benches, trash receptacles, irrigation systems, informational and directional street signage installed by Declarant, security gates, surveillance cameras, association related communication equipment and software, and any other landscaping or improvements located along or in dedicated rights of way and which were installed by Declarant. The foregoing maintenance shall be performed in a manner consistent with the Development-Wide Standard. Further, the Association shall bear the responsibility for all utility charges incurred because of street lights, security gates, communication service (internet, web page, and similar service for the benefit of the association and its members), and irrigation systems which are installed on or about the Common Property, and shall pay all insurance premiums attributable to or connected with any portion of the Common Property.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit Owners.

ARTICLE III
HOMEOWNERS ASSOCIATION

- 3.01 Purposes, Powers and Duties of the Association. The Association shall be formed as a non-profit corporation for the sole purpose of performing certain functions for the common good and general welfare of the residents of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the members. To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a Texas non-profit corporation organized under the Texas Non-Profit Corporation Act, and (b) shall have the power and duty to exercise all of the rights, powers, and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.
- 3.02 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration. For purposes of voting, there shall be two (2) classes of members as set forth in Section 3.03.
- 3.03 Voting Rights.
- (a) Each Owner of a Residence, with the exception of Declarant, shall be a Class A Member and shall be entitled to one (1) Class A vote per Residence. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.
 - (b) The Declarant shall be the sole Class B member and shall be entitled to three (3) votes for each Lot or Residence owned; provided, however, in no event shall the Class B member have less than the total number of Class A votes plus one (1). The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.08 below.
 - (c) The Development will be composed of Lots to be developed in phases. Each such phase will be platted of record in the office of the Clerk of Ellis County, Texas, in accordance with Article X of this Declaration. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying such phase, total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in subsection (b) of this Section 3.03 and in no event shall Class B Membership cease and be converted to Class A Membership (as provided in subsection (b) of this Section 3.03) until after

the Association receives the written notice provided for in the preceding sentence' provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subjected to this Declaration.

3.04 Board of Directors. The Affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in the Bylaws of the Association.

3.05 Suspension of Membership Rights. The Board may suspend the voting rights of any member and the right of enjoyment of the Common Property of any person who:

(a) Shall be subject to the Right of Abatement, as defined in Section 8.02, by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards (as hereinafter defined) of the ACC (as hereinafter defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Section 5.11, 6.14 or 8.02;

(b) Shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Article IV hereof; or

(c) Shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property.

Such suspension shall be for the balance of the period in which said member or person shall remain in violation, breach or default, as aforesaid, except that in the case of violation described in subsection (c) of this Section 3.05, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

3.06 Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

3.07 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Texas Non-Profit Corporation Act, the Articles of Incorporation of the Association, and the Bylaws of the Association, as each shall from time to time be in force and effect.

3.08 Control by Declarant.

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby

retains the right to appoint and remove any member of the Board of the Association and any officer or officers of the Association until fifteen (15) days after the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of the recording of this Declaration; (ii) the date upon which all of the Lots intended by Declarant to be a part of the Development have conveyed by Declarant to Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant; provided, however, that the Owners shall be entitled to elect certain members of the Board of the Association in accordance with applicable law which shall not be removable by the Declarant acting alone.

- (b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots, and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner, by acceptance of a deed or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section 3.08. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any 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.

ARTICLE IV ASSESSMENTS

4.01 Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner of a Residence, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Residence, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

- (a) To timely pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him;
- (b) To timely pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this

Declaration against all Residences owned by him;

- (c) That there is hereby created a continuing charge and lien upon all Residences owned by him against which all such assessments are made to be secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees;
- (d) That such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgement or decree or by any agreement, contract, mortgage, deed of trust or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Residence or Residences (together with any and all Structures which may from time to time be placed or located thereon), and (2) to finance the construction repair or alteration of Structures. A person or entity acquiring a lien or encumbrance on a Residence after this Declaration is recorded shall acknowledge, by the act of filing an instrument creating such lien, that such lien or encumbrance is inferior to the continuing lien for the charge and lien provided for herein, whether or not such acknowledgment is specifically sated in the instrument creating the lien or encumbrance, except as provided by Subsections (i) and (ii) above;
- (e) That no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence from liability for any assessment thereafter assessed;
- (f) That all annual, special and specific assessments (together with interest thereon as provided in Section 4.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any residence owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 4.01 (c) of this Declaration) a personal obligation which will survive any sale or transfer of the Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor; and
- (g) Failure to pay any assessment when due shall constitute a default of the Owner's obligations hereunder, and shall entitle the Association to exercise the remedies provided under the terms of this Declaration.

4.02 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the Residents of

the Development, including, and equipping of Common Property, maintenance of private driveways or other improvements or landscaping which are designated by Declarant to be maintenance obligations of the Association, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association including, without limitation, any ad valorem real and personal property taxes on any real and personal property owned by the Association, and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 Annual Assessments.

- (a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to an Annual Assessment of Four Hundred Fifty and No / 100 Dollars (\$450.00) per Residence; provided, however, in the event that the Commencement Date falls on a day other than January 1, the annual Assessment for such year shall be prorated so that each Owner pays an Annual Assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year, with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date. For so long as Declarant has the right to appoint and remove Directors and Officers of the Association, the Annual Assessment shall not be reduced below Four Hundred Fifty and No/100 Dollars (\$450.00) without the express written consent of Declarant.
- (b) Commencing with the first Assessment Year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year by Declarant; provided, however, such increase shall not be more than twenty percent (20%) above the Annual Assessment for the previous Assessment Year without a vote of Membership.
- (c) Commencing with the first Assessment Year and continuing thereafter, the Annual Assessment for each Assessment Year may at any time and from time to time be increased more than twenty percent (20%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and

voting at a meeting of Member duly held in accordance with the provisions of the Bylaws of the Association and this Declaration.

4.05 Special and Parcel Assessments.

- (a) In addition to the Annual Assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, Special Assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property or on any private drives designated by Declarant to be a maintenance obligation of the Association. Such Special Assessments may be levied by the Board in any Assessment Year without the approval of the members, which Special Assessments in the aggregate do not exceed an amount in equal to the Annual Assessment then in effect. Special Assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association and this Declaration.
- (b) The Association shall also be authorized to levy, in any Assessment Year and with such frequency as the Association shall deem necessary, Parcel Assessments for the purpose of paying, in whole or in part, the cost of estimated expenses for the sole benefit of a particular Parcel, which Parcel Assessments shall be allocated equally among the Residences in a Parcel.

4.06 Assessment Procedure.

- (a) The Board shall establish the Annual Assessment for each Assessment Year at an amount not in excess of the maximum Annual Assessment as determined by the provisions of this Article IV, and shall also establish the date during the Assessment Year on which the Annual Assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs will be covered by Special Assessment. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the Annual Assessment and the Due Date. The Annual Assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the Annual

Assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any Special Assessments for capital improvements which may be levied in accordance with the provisions fo this Article IV.

- (b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04 (c) and Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirements, and the required quorum at such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

4.07 Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Residences.

4.08 Contribution by Declarant. For so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, Declarant shall not be liable for the payment of any assessments; provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of Annual, Special and Specific Assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

4.09 Effect of Non-payment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of (i) the highest legal rate of interest which can be charged, or (ii) the rate of eighteen percent (18%) per annum, or (iii) at such rate as the Board may from time to time establish; provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the law as of the State of Texas. In the event of default in the payment of any one or more installments of an Assessment, the Board may declare any remaining balance of the Assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any Assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligations of such Owner, as well as a lien on such Owner's Residence enforceable in accordance with the provisions of this Declaration.

- 4.10 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all Assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all Assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.
- 4.11 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no Special Assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.
- 4.12 Specific Assessments. The Board shall have the power to specifically assess any Owner pursuant to this section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are maintenance responsibility for the Association as provided herein:
- (a) Expenses of the Association which benefit less than all of the Residences which may be specifically assessed equitably among all of the Residences which are benefitted according to the benefit received;
 - (b) Expenses incurred by the Association pursuant to Section 6.16 hereof; and
 - (c) Reasonable fines as may be imposed in accordance with the terms of this Declaration and the Bylaws.

ARTICLE V
ARCHITECTURAL CONTROL

- 5.01 Architectural Control Committee - Creation and Composition.
- (a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than three (3) nor more than five (5) individuals; provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation,

to appoint all members of the ACC until the plans for all of the Residences for all of the Lots in the Developments have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC may, at the discretion of Declarant, be borne by the Association.

- (b) Each initial member of the ACC shall be appointed for a term expiring on December 31, 2016. Thereafter each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall, subject to the provisions of 5.01 (a), be filled by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect of receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC).

5.02 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to assure that any installation, construction, or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality (and is aesthetically compatible) with the existing standards of the Development and Design Standards, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purposes including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.03 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determined necessary. The members of the ACC shall be reimbursed by the Association for traveling expenses and other reasonable out-of-pocket costs incurred in the performance of their duties as members of the ACC.

5.04 Operations of the ACC.

- (a) Meetings. The ACC shall hold regular meetings at least once every three (3) months or more often as may be established by the ACC. Special meetings may be called by the Chairman upon written request of a majority of the members of the ACC then in office. Regular and special meetings of the ACC shall be held at such time and at

such place as the ACC shall specify. Notice of each regular or special meeting of the ACC shall be mailed to each member thereof at his residence or at his usual place of business at least ten (10) day before the day the meeting is to be held. Notice of regular and special meetings need not specify the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The ACC shall maintain both a record of votes and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by member of the Association and by the Association's Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed with minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b) Activities.

- (i) The ACC shall adopt and promulgate the Design Standards described in Section 5.05 hereof and shall, as required, make findings, determinations, rulings and orders with respect to the conformity with said Design Standards of plans and specifications submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specific requirements or conditions, pursuant to the provisions of this Declaration.
- (ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of the Design Standards. The unanimous action of the two (2) or more members with respect to the matter specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization, subject, however, to

review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in the paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by the ACC, but in no event later than thirty (30) days after the filing of such request. The decision of a majority of the member of the ACC with respect to such matter shall be final and binding.

5.05 Design Standards

- (a) The ACC shall from time to time adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purpose of:
 - (i) governing the form and content of plans and specification to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
 - (ii) governing the procedure for such submission of plans and specifications:
 - (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of structures and all other matters that require approval by the ACC pursuant to this Declaration, and
 - (iv) assuring the conformity and harmony of external design and general quality of the Development.
- (b) The ACC shall make a published copy of its current Design Standards readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.06 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any lot, nor shall any existing Structure upon any lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specification therefor shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC in the Design Standards, including, without being limited to:

- (a) a site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces,

including the number thereof, and all siltation and erosion control measures;

- (b) a lot grading plan;
- (c) a foundation plan;
- (d) a floor plan;
- (e) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all back-filling and landscaping are completed;
- (f) specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing Structures; and
- (g) plans for landscaping and grading
- (h) plans of exterior electrical, electronic or other power support equipment (solar power panels and turbines, satellite dishes and similar equipment).

5.07 Approval of Plans and Specifications. Upon approval by the ACC of any plans and specification submitted pursuant to this Declaration, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the ACC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the ACC's right, in its discretion, to disapprove similar plans and specifications are subsequently submitted for use in connection with any other Lot or Structure.

5.08 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration because of any of the following:

- (a) the failure to include information in such plans and specification as may have been reasonably requested;
- (b) the failure of such plans or specifications to comply with this Declaration or the Design Standards; or
- (c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality (or fails to be aesthetically compatible) with the standards for the Development as set forth in the

Design Standards or the Development-Wide Standard, or (ii) as to location to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

- 5.09 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and shall be returned to the applicant. If the ACC fails to take action within thirty (30) days of receipt of plans and specification submitted for approval, then the applicant shall give written notice by certified mail of such failure to the ACC; thereafter, failure by the ACC to take action within fifteen (15) days of receipt of applicants written notice shall be deemed approval of such plans and specifications.
- 5.10 Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times, enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structures or the use of any Lots or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason on such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.
- 5.11 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association and the Board shall take appropriate measures to correct the violation; the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Section 8.02 hereof.
- 5.12 Certification of Compliance.
- (a) Upon completion of the installation, construction or alteration of any Structure in accordance with plans and specifications approved by the ACC, the ACC shall, upon

written request of the Owner thereof or upon the ACC's own initiative, issue a Certificate of Compliance, identifying such Structure and the Lot upon which such Structure is placed, and stating the plans and specifications have been approved and that such Structure complies with such plans and specifications. A copy of said Certificate shall be filed for permanent record with the plans and specification on file with the ACC.

- (b) Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Lot comply with all the requirements of this Article, provided, however, that the Certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of Structures or of the workmanship, or to represent or warrant to anyone the quality, function or operation of the Structures or of any construction, workmanship, engineering, materials or equipment.
- (c) The issuance of the Certificate shall in no way be construed to certify to any party that the Structures have been built in accordance with any applicable rule or regulation.

5.13 Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and of inspections performed pursuant to Section 5.10. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.14 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age, national origin, disability or familial status. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age, national origin, disability or familial status.

5.15 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for all systems, mechanical, plumbing, electrical, engineering, or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the member thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents or any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these Restrictions, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any

action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, quit claims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence or nonfeasance, and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

5.16 Modifications Committee.

- (a) The ACC shall establish a modifications committee (the “Modifications Committee”) to exercise exclusive jurisdiction over the modifications, additions, or alterations made on, or to, existing Structures as provided in Section 5.06 hereof, and shall have such other responsibilities as may be delegated to it by the ACC.
- (b) The Modifications Committee will set standards, review and act upon all proposed modifications or improvements to those Lots where Residences have been constructed and sold and are owned by someone other than the Declarant, its successors or assigns or a builder. This Committee will be comprised of no less than three (3) members with at least two (2) members required to be members of the Association. The Modifications Committee will be governed by the Board and shall generally adhere to all the provisions set forth in this Declaration for the ACC pertaining to approval of plans and specifications.
- (c) The Modifications Committee shall promulgate detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply; plans and specification showing the nature, kind, shape, color, size, materials and location of such modifications, additions, or alterations, shall be submitted to the Modifications Committee for approval as to quality of workmanship and design and harmony of external design with existing Structures and as to location in relation to surrounding Structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of the Owner to remodel the interior of a Structure or to paint the interior of a Structure any color desired.

ARTICLE VI
GENERAL COVENANTS AND RESTRICTIONS

- 6.01 Application. The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.
- 6.02 Restriction of Use. All buildings, Residences, Structures, and other improvements erected, altered, or placed on a Lot shall be of new construction, and no structure of a temporary character, trailer, mobile home, tent, shack, garage, barn, or outbuilding shall be used on a

Lot at any time as a Residence, either temporarily or permanently. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other non-residential purposes. No duplexes or other attached housing for more than one dwelling unit shall be erected on any Lot.

Temporary structures and model homes may be used as building offices and other related purposes by Declarant or a builder who is currently constructing homes for resale within the Property. No builder shall be allowed to maintain an office or model home for the purpose of the sale of homes unless said builder is conducting an active sales program within the Property and not for the purpose of sales in other subdivisions outside of the Property.

6.03 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC of plans and specifications for such split, division or subdivision. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter; and, provided further, that the Owner of the Residence on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot.

6.04 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specification for the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape and required landscaping as provided for in Section 6.05. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

6.05 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specification for the landscaping to accompany such construction or alteration. A written plan of landscaping must be submitted to the ACC prior to installation of any materials; this plan shall include a drawing to show location and description of all "hard scape" items such as fences, walls, rocks and so forth. Owner shall be required to sod the front yard and all side yards which are visible from a street with a permanent, heat tolerant grass (i.e. Bermuda, St. Augustine, or other grass approved by the ACC). Ground cover composed of living material such as ivy, Asiatic jasmine, may be allowed if approved by the ACC.

No "desert style" landscaping, rock covered yards, or other stone yard cover will be allowed.

Owner must install a front yard and street right-of-way underground irrigation system and plant at least one 3" caliper or better native hardwood tree in the front yard. The street-facing side yards or corner lots shall also be irrigated and install sod or hydroseed according to the same seasonal schedule and plant at least one 3" caliper native hardwood tree in the side yard. The 3" caliper tree requirement may be waived if the front yard contains three (3) or more existing trees. All rear yards visible from a street must be sodded within sixty (60) days of occupancy of a Residence. All side yards will have a meandering landscape design. All side entry garages to have enhanced landscaping 4 feet past the entry for privacy.

Landscaping shall be complete in accordance with approved plans not later than sixty (60) days after: (1) final inspection by the City of Midlothian, Texas, building inspector and/or Ellis County building inspector as may be applicable or (2) occupancy of a Residence, whichever is earlier. In the case of existing homes, proposed changes and additions in landscaping must be submitted for approval by the ACC in the same detail as new construction. Once the plans have been approved by the ACC, a time frame for completion of the approved changes shall be agreed upon between the ACC and the homeowner.

The builder shall be responsible for providing and installing landscaping as required in this covenant as a part of his contract with the home buyer. Notwithstanding the preceding sentence, should the builder not complete the proper landscaping before the closing of the sale of the Residence to the home buyer, said home buyer (Owner) shall be responsible for completing landscaping according to this provision.

- 6.06 Existing Trees. No tree having a diameter of three (3) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot unless such removal is in conformity with approved landscaping plans and specifications submitted pursuant to the provisions of Section 6.05 hereof.
- 6.07 Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefor approved by the ACC. Temporary structures and model homes may be used as building offices pursuant to the provisions of Section 6.02.
- 6.08 Outbuildings. No metal storage outbuildings shall be erected, placed or maintained upon any Lot in the Property. No tree house or children's playhouse shall be permitted on any Lot in the Development without prior written approval of the ACC. Outbuildings or other structures, temporary or permanent, other than the Residence or garage shall be limited to eight feet (8') in height and shall be subject to approval by the ACC. Any other type of permitted outbuilding must be in keeping with the overall character and aesthetics of the Residence located on the Lot. The ACC shall require prior approval of, but not limited to, all outbuildings, play structures, shade structures or pool buildings. Any outbuilding will be required to be constructed with material and of a design that is determined by the ACC to be

compatible with the design of the Residence. All playground and recreational equipment shall be placed at the rear of a Lot. No outbuilding or play structure will be permitted to be placed on easements; be located nearer than five feet (5') to an interior side line of the Lot; or forward of the front building line. For any Lots abutting the SomerSet Addition, along the western perimeter, the rear yard setback line shall be 15 feet for outbuildings. The ACC is hereby authorized to determine what constitutes a violation of this restriction.

6.09 Prefabricated Structures. Prefabricated or factory built structures shall not be permitted within the Property and such manufactured units shall not be employed as elements in the construction of Structures affixed to Lots or Residences within the Property except by express written consent of the ACC.

6.10 Signs.

- (a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the ACC's prior written approval, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except
 - (i) such signs as may be required by legal proceedings;
 - (ii) not more than one "For Sale" sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and, provided, further, that if, at the time of any desired use of such sign, the Association is making "For Sale" signs available for the use of Owners, the signs made available by the association must be used.
 - (iii) directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC;
 - (iv) any sign required by any governmental authority having appropriate jurisdiction; and
 - (v) one small, professionally fabricated sign, such sign having a maximum face area of two square feet, indicating that the Residence is protected by a security system and monitored by a professional security company;
 - (vi) contractor signs used for advertising work performed on a Lot, provided that such signs shall have a maximum face area of four square feet, and shall not be erected more than ten (10) days prior to commencement of the work and are removed no later than ten (10) days following completion of the work.
- (b) In no event during approved construction of any Structure shall more than one job identification sign be approved by the ACC.

- (c) All “for rent” or “for lease” signs are prohibited.
- (d) The number of temporary signs must be kept to a minimum and may be put up no sooner than 24 hours in advance of a sale. Signs must be removed promptly after a sale has ended.
- (e) No sign may be placed on the Common Property or the entrance areas to the Development without written approval of the ACC.

6.11 Setbacks. Building area set backs shall be within the recommended building lines indicated on the recorded subdivision plats of the Property and as specified in the City of Midlothian Subdivision Ordinance (hereinafter referred to as “Subdivision Ordinance”). In no event shall the setbacks be less than those required by the Subdivision Ordinance unless a variance is granted by the appropriate governmental authority and approved by the ACC. In approving plans and specifications for any proposed Structure, the ACC may require more restrictive setbacks than the minimum specified in the Subdivision Ordinance for the location of such Structure. All such setbacks shall be established such that they do not violate the provisions of applicable ordinances, laws, rules, regulations or the provisions of the subdivision plat(s) establishing the Development. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

Setbacks are as follows:

For Lots less than 15,000 square feet:

Front Yard Setback	16-21 ft
Side-Yard Setback (street-side)	15ft
Interior Side-Yard Setback	5 ft
Rear-Yard Setback	10 ft

For Lots more than 15,000 square feet:

Front Yard Setback	35ft
Side-Yard Setback (street-side)	15ft
Interior Side-Yard Setback	10 ft
Rear-Yard Setback	15 ft

For Lots abutting the SomerSet Addition:

The rear yard setback line for the lots abutting the SomerSet Addition, along the western perimeter, shall be 50 feet for the primary structure and 15 feet for accessory buildings.

6.12 Retaining Walls and Fences. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications

for such fences and walls (including colors). No fence shall be constructed in violation of any applicable ordinance laws, rules, regulations, or the provisions of the subdivision plat(s) establishing the Development.

Retaining walls shall be masonry on the front and all side Lot areas between the Residence and any adjacent streets. The masonry retaining walls shall match or be compatible with the exterior materials on the Residence.

Fences and screening may be used within the Property to define private spaces or to attract or to divert attention to or from particular views. Certain objects which may be fences or screened include; (1) free standing utility apparatus, e.g. transformers, switching equipment, etc; (2) exterior, ground level machinery, e.g. heating and air conditioning equipment, (3) outside storage and service area for equipment and supplies; and (4) refuse containers and related storage areas.

Acceptable methods of screening are as follows: (1) earth banks and beams which shall have a maximum slope of 2:1 and be covered with plant material as approved by the ACC; (2) landscaping planting screens, hedges, etc.; (3) masonry walls or other materials which would be compatible with the approved retaining walls; (4) decorative iron as approved by the ACC; or (5) fencing as approved by the ACC. All such fence plans must be submitted to and approved by the ACC prior to construction.

General guidelines for fences shall include: (1) no fence shall be constructed more than 6' above grade in height; (2) landscape planting as an integral component; (3) no woven metal or chain link fences will be allowed except as approved by the ACC as small area pet enclosures (i.e. dog run), such pet enclosures to be screened by privacy fencing from direct view from the street as well as other fencing and/or plant materials as may be required and approved by the ACC; and (4) no fence which completely blocks vision shall be constructed except where the need for privacy is evident and approved by the ACC.

All wooden fences must be constructed with 1x6 cedar planks with top caps and stained in colors approved by the ACC.

All fencing along the open spaces, parks, trails, and detention areas shall be wrought iron fencing.

All fencing from the Residence to the side property lines visible from the street must be constructed of masonry material that match or is compatible with the exterior materials of the Residence, wrought iron, or cedar top cap fence; landscaping planting screens, hedges or shrubs or decorative iron must be approved by the ACC.

- 6.13 Roads and Driveway. No road or driveway shall be constructed or portion altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and

driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards of the ACC. No road or driveway shall be constructed in violation of any applicable ordinances, laws, rules, regulations, or the provisions of the subdivision plat(s) establishing the Development.

- 6.14 Antennae. Etc. No antennae, satellite dish over 24" in diameter, or electronic device of any type shall be placed on any Residence Structure or Lot so as to be visible from a street, Common Property or another Residence. Any such device shall be placed in the least conspicuous location on the Lot at which an acceptable quality signal can be received and is not visible from Neighboring property or is screened from view of adjacent Lots in a manner consistent with the community wide standard and the Design Standards. No antennae shall be installed or used for the purpose of transmitting of electronic signals.
- 6.15 Clotheslines, Garbage Cans, Etc. All clotheslines, equipment, garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only.
- 6.16 Maintenance. The owner of each Lot shall maintain the same and adjacent street right-of-way, and the improvements, sod, trees, hedges, and plantings thereon, in a neat and attractive condition. The owner of each lot shall also maintain "Street Trees" that are planted in the adjacent street right-of-way between the sidewalk and curb. Such Lot maintenance shall include regular mowing, edging of turf areas, weeding of plant beds, fertilizing, weed control and watering of the turf and landscape areas on each Lot. For lots less than 15,000 square feet, all maintenance will be maintained by the Association. Diseased or dead plants or trees must be removed and replaced within a reasonable time frame. On front lawns and wherever visible from any street, there shall be no decorative appurtenances placed, such as sculptures, birdbaths, birdhouses, fountains or other decorative embellishments unless such specific item(s) has been approved in writing by the ACC. The Association or Declarant shall have the right, after ten (10) days notice to the owner of any Lot setting forth the action intended to be taken by the Association or Declarant, provided at the end of such time such action has not already been taken by such Owner, (i) to mow or edge the grass thereon, (ii) to remove any debris therefrom, (iii) to trim or prune any tree, hedge, or planting that, in the opinion of the Association or Declarant, by reason of its location or height or the manner in which it has been permitted to grow, is detrimental to the enjoyment of adjoining property or is unattractive in appearance, (iv) to repair or stain/paint any fence thereon that is out of repair or not in harmony, with respect to color, with fencing on adjacent property, and (v) to do any and all things necessary or desirable in the opinion of the Association or Declarant to place such property in a neat and attractive condition consistent with the intention of this Declaration. The person who is the Owner of such property at the time such work is performed by the Association shall be personally obligated to reimburse the Association of the cost of such work within then (10) days afer it is performed by the Association, and if such amount is not paid within said period of time, such Owner shall be obligated thereafter

to pay interest thereon at the maximum rate allowable by law and to pay attorneys' fees and court cost incurred by the Association in collecting said obligation, and all of the same shall be secured by a lien on such Owners' property, subject to liens then existing thereon. Such lien shall be enforceable as any other assessment lien as provided in this Declaration.

- 6.17 **Commercial and Recreational Vehicles and Trailers.** No commercial vehicle, commercial use truck, bus, trailer, mobile home, recreational vehicle, camper, truck with camper top, boat, boat trailer, self-propelled or towable equipment or machinery of any sort or any item deemed offensive by Declarant, ACC, or Association or like equipment shall be permitted on any Lot on a permanent basis. Nor shall any such equipment be allowed on any street right-of-way without movement for a period of twenty four (24) hours or more during a period of seven (7) consecutive days. No junk vehicles or vehicles in disrepair or neglect shall be stored, repaired or displayed on any Lot, street or otherwise in the Development. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view by neighboring residences and streets. During the construction of improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of construction of the Residence.

This restriction shall not apply to automobiles or small passenger trucks in good repair and attractive condition, provided that any such vehicles are parked on an improved driveway which has been approved by the ACC. No vehicle shall ever be permitted to be parked on the front or side lawn within view of the public.

The ACC and Board reserve the right to restrict street right-of-way parking on specific streets within the Development when street parking could detract from the architectural harmony of an area or cause restricted street access to normal traffic flow or emergency vehicles.

- 6.18 **Recreational Equipment.** Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals may be placed adjacent to the driveway if the backboards are installed behind the front building line and are constructed of a clear plexiglass as approved by the ACC. No above ground pools shall be allowed.
- 6.19 **Non-Discrimination.** No Owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale of rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.
- 6.20 **Animals.** No agricultural animals may be kept on any Lot and no animals, including birds, insects, reptiles, sheep, goats, horses, cattle, poultry, dangerous animals (the determination

as to what is a dangerous animal shall be in the sole discretion of the Associations Board), or livestock of any kind shall never be kept in the Development except that dogs, cats or other common household pets (not to exceed a total of three animals) may be kept by the Owner or tenant of any Residence, provided they are not kept for any commercial purpose. Any allowable pet that is kept in a household must be confined to its Owner's Lot either by constraints of a backyard fence, a leash or within a residence. No animal shall be permitted to run freely away from its Owner's Lot and must be controlled by a leash or trained to walk with the Owner unleashed. All applicable leash and licensing laws in effect in the City of Midlothian and Ellis County, Texas shall also apply to this animal husbandry provision. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed placed or altered on an Lot unless plans and specification for said Structure have been approved by the ACC.

- 6.21 Trash and Rubbish Removal. No trash, rubbish, garbage, manure, or debris of any kind shall be kept or allowed to remain on any Lot. The Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense, and prior to such removal all such prohibited area adequately screened by planting or fencing so as not to be seen from neighboring Lots or public or private streets. If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made, in order to provide access to persons making such pick-up. Except during approved construction and as approved by the appropriate form of solid waste on any Lot or on Common Property. Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards. Reasonable amounts of construction materials and equipment may be stored upon a Lot for reasonable periods of time during the construction of improvements thereon.
- 6.22 Reasonable Enjoyment. No nuisance shall ever be erected, placed, or suffered to remain upon any Lot in the Property and no Owner of, or resident on, any Lot in the Property shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or resident. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become an annoyance or nuisance to the community. The Association's Board is hereby authorized to determine what constitutes a violation of this restriction.
- 6.23 Chimney Stacks. Chimney stacks on front of Residences may not be cantilevered and hang in the air. They must sit on foundations and veneered with brick, stone or other approved masonry material as applicable to each individual Residence.
- 6.24 Exterior Surfaces. All Residences shall be constructed of at least 90% masonry on all exterior walls. Lots adjacent to Mt. Zion Road and Ledgestone Lane shall be 100% masonry.

Recommended siding materials include brick, stone, and stucco. All exterior wall and facade materials and brick mortar shall be in colors approved by the ACC and samples must be submitted for ACC approval. Old used brick will be accepted in special circumstances, as will the painting of brick. All chimneys shall be of masonry material.

- 6.25 Roof. Roofing material and color shall be specified in the plans submitted to the ACC for approval. No plumbing, heating vent or roof ventilator (other than ridge ventilators) shall penetrate roof surfaces which face the street or streets adjacent to the residential structures unless approved by the ACC. The ACC may approve exceptions to this restriction when energy conservation and heating/cooling efficiency require ventilators that because of a particular roof design, cannot be hidden from public view, or if the City of Midlothian Building Code requires otherwise. All roof stacks and flashing must be painted to blend with the roof colors, unless it is a decorative metal that matches the decor and design of the Residence that is approved by the ACC.

Minimum roof pitch on the front elevation shall be 10:12, unless approved by the ACC. Certain architectural styles, e.g. Georgian and Mediterranean, do not require as steep a minimum roof pitch and will be analyzed on a case by case basis by the ACC. Minimum roof pitch on rear elevations and certain front to back elevation shall be 8:12, unless approved by the ACC.

Ten (10) foot high plates are required on sixty-six percent (66%) of the first floor including the complete front and all sides facing streets.

Roof material shall be a high quality composition shingle of equal to or better than a laminated medium weight shingle, e.g. Stormmaster Slate or GAF Camelot II. No three tab shingles shall be allowed. Other roofing materials may include natural or approved artificial slate; or clay or concrete tile of a type, style and color as approved by the ACC. In no event shall the same pitched portion of a roof be comprised of more than one material.

- 6.26 Driveways. Driveways shall be constructed with concrete or other hard surface material such as paving stones or brick that is compatible with the overall landscape flatwork scheme and as approved by the ACC. Existing trees, topography and landscape planning should be taken into consideration and where possible driveways should curve. Front yard circular driveways and off street parking areas may be approved at the discretion of the ACC.
- 6.27 Pools and Spa Equipment. Plans for proposed swimming pools, hot tubs, surrounding decks, fencing and screening must be submitted for approval before any clearing, grading or construction is commenced. All swimming pools and hot tubs must be properly fenced in accordance with the applicable City of Midlothian Ordinance. No above ground pools will be approved.
- 6.28 Mailboxes. All mailboxes shall be the same decorative ornamental iron mailbox. The ACC

shall decide color and model number of all the mailboxes.

- 6.29 **Oil and Mining Operations.** No oil or natural gas drilling, oil or natural gas development; or oil refining, quarrying, or mining operations of any kind; no oil, natural gas wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, or minerals shall be erected, maintained or permitted in the Development. Nothing herein shall be construed to prevent the Declarant and/or the Association from developing and utilizing detention ponds and water wells in common areas, said water wells to be used to water common area landscaped areas and to divert water to any common area detention ponds. Declarant hereby retains all water rights relating to the Property.
- 6.30 **Commercial Use.** No activity, whether for profit or not, which is not related to single-family residential purposes, shall be carried on any Lot, except on those Lots which may be designated by the ACC for use as sales offices, construction offices, and storage facilities for a period of time commensurate with home construction and sales within the Property. Except for this temporary use of selected Lots, no noxious or offensive activity of any sort shall be permitted, nor shall anything be done, on any Lot which may be or become an annoyance or nuisance to the neighborhood. Reasonable home office use is permitted.
- 6.31 **Septic Tanks.** No cesspool, septic tank or privy shall be placed or maintained on any Lot.
- 6.32 **Declarant's Rights During Development Period.** During that period of time while any parcels of land or Lots located within the Property are being developed and marketed (the "Development Period"), the Declarant, with the right of assignment, shall have and hereby reserves the right to reasonable use of the Common Area and land owned by Declarant within the Property in connection with the promotion and marketing of land within the boundaries of the Development. Without limiting the generality of the foregoing, Declarant may erect and maintain such signs, temporary buildings, model homes, and other structures as Declarant may reasonably deem necessary or proper with the promotion, development, and marketing of land within the Property during the Development Period.
- 6.33 **Builder Rights.** During the Development Period, the ACC shall have the right to allow an approved builder in the Development the right to erect and maintain such signs, model homes, and other structures as the ACC may reasonably deem necessary or proper in connection with builder's promotion, development, and marketing of Lots and Residences located within the Development. The approvals granted by the ACC, as described above, are discretionary and may be revoked if in the opinion of the Declarant the builder does not comply with guidelines established by the ACC or the Declarant. Builder shall be given at least ten (10) days notice to comply with any revocation of approval by the ACC.
- 6.34 **Construction Work.** Except in an emergency, or when other unusual circumstances exist as determined by the Board, outside construction work or noisy interior construction work shall be permitted only after 6:00 A.M. and before 9:00 P.M.

- 6.35 Electrical Telephone and other Utility Lines. All electrical, telephone and other utility lines and facilities which (i) are located on a Lot, (ii) are not within or part of any Structure, and (iii) are not owned by a governmental entity, a public utility company, or the Association shall be installed in underground conduits or other underground facilities. Lighting fixtures may be installed above ground if approved in writing by the ACC.
- 6.36 Window Coolers. No window or wall type air conditioners or water coolers shall be permitted to be used, erected, placed or maintained on, or in, any Residence on any part of the Lot.
- 6.37 Minimum Home Size and Number of Stories. No single family Residence shall be located on any Lot unless said Structure shall meet or exceed the minimum square feet (heated living area) requirement established by any applicable zoning ordinance and in no event shall the minimum square feet be less than (1) 1,700 square feet, for Residences located on Lots less than 15,000 square feet, (2) 2,800 square feet, for Residences located on Lots greater than 15,000 square feet, and (3) 3,000 square feet, for Residences located on Lots that abut the neighboring SomerSet Addition, along the western perimeter. The first floor must have a minimum square footage of (1) 1500 square feet (heated living area), for Residences located on Lots less than 15,000 square feet, and (2) 2,200 square feet (heated living area) for Residences located on Lots greater than 15,000 square feet.

For any Lots abutting the neighboring SomerSet Addition, along the western perimeter, the Residences shall be restricted to 1-1/2 story homes.

- 6.38 Garages. Garages shall be side or rear entry. All garages must have doors and the doors must be equipped with automatic garage door openers. Any Lot greater than 15,000 square feet is required to have at least a three (3) car garage. For Lots less than 15,000 square feet, front entry garages are permitted only if the Lot has a 21 foot front setback/building line. The Lots abutting the neighboring SomerSet Addition shall have only side entry garages.
- 6.39 Sidewalks. The builder must install 4' wide broom finish concrete sidewalks. The sidewalks shall be located on the property line and extend 4' into the street right-of-way. The street facing side yards or corner lots shall also be required to have sidewalks.
- 6.40 Street Parking. No overnight parking will be allowed on the streets.
- 6.41 Exterior Lighting. No exterior lighting shall be installed or maintained on any Lot which is found to be objectionable by the Association. Upon being given notice by the Association that any exterior lighting is objectionable, the Owner of the Lot on which same is located will immediately remove said light or have it shielded in such a way that it is no longer objectionable. If the Owner fails to honor the request, the Association may remove the light at the Owner's sole cost and expense and without the liability for trespass or conversion.

ARTICLE VII
EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 Easements.

- (a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:
 - (i) the erection, installation, construction and maintenance of wires, lines, conduits, and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;
 - (ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;
 - (iii) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and
 - (iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.
- (b) An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and other service vehicles to enter upon the Common Property including, but not limited to, private streets, in the performance of their duties and further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Common Property to render any service.
- (c) Each Lot and its Owner is hereby declared to have an easement, and the same is hereby granted to Declarant, over all adjoining Lots and Common Property for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any Structure, or any other cause. There shall be easements for the maintenance of said encroachment, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event of Structure on any Lot is

partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. Each of the easements herein above referred to shall be deemed to be established upon the recondition of the Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot.

- (d) In the event that audio and video communication services and utilities are made available to any said Lots by means of an underground coaxial cable system, the company furnishing such services and facilities shall have a two foot (2') wide easement along and centered on the underground wire or cable when and as installed by said company from the utility easement nearest to the point of connection on the permanent improvement or Structure constructed, or to be constructed upon said Lot, and in a direct line from said nearest utility easement to said point of connection.
- (e) No Owner shall have any right to use any easement retained by the Declarant or conveyed by Declarant to the Association in a manner which is inconsistent or which interferes with the intended use for such easement.

7.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.

7.03 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely be reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of the Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 7.01.

7.04 Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by the Declaration shall be construed as permitting any action prohibited by the recorded subdivision plat of the Development, applicable zoning laws, or by the laws, rules or regulations of any government body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by the Declaration, the most restrictive provision shall govern and control.

ARTICLE VIII ENFORCEMENT

8.01 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns.

8.02 Right of Abatement.

(a) Except where different notice provisions are provided in Sections 5.11 and 6.14, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the right of abatement ("Right of Abatement").

(b) The Right of Abatement, as used in this Section and in Sections 5.11 and 6.14 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repairs such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions provided such entry and such action are carried about in accordance with the provisions of this Section, and with the costs thereof including the costs of collection and reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by Law or 18% per annum to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Article IV hereof, and (iii) all deeds of trust or mortgages given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon), or (2) to finance the construction, repair or alteration of Structures.

8.03 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights, of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or

failure to perform any of the obligations provided by, the Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.04 Collection of Assessments and Enforcement of Lien.

- (a) If any Assessment, interest, cost or other charge is not paid as required by the Declaration, the Association may (i) bring an action at law against the Owner personally obligated to pay the same, (ii) bring an action to foreclose any lien created by the Declaration against the Lot or Lots subject to the lien (which shall include the right, but not the obligation, to file a notice of lien against said Lot in the deed records of Ellis County, Texas), or both, for the purpose of collecting such Assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.
- (b) As an additional remedy, but in no way as a limitation on the remedies, if any Assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Ellis County, Texas, to the highest bidder for cash, after providing to the Owner all notices and performing all acts required by Section 51.001 of the Texas Property Code, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the association, or its assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of Assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death, incapacity, or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.
- (c) WAIVER. Each owner, by acceptance of a deed conveying a lot subject to this Declaration, to the fullest extent permitted by law waives any right which owner may

have under the constitution or the laws of the State of Texas, (excepting section 51.002 of the Texas Property Code) or the judicial hearing prior to the exercise of any right or remedy provided by the Declaration, and each owner waives owner's rights, if any, to set aside or invalidate any sale duly consummated in accordance with the provisions of the Declaration on the ground (if such be the case) that the sale was consummated without a prior judicial hearing. All waivers by owner in this paragraph have been made voluntarily intelligently and knowingly, after owner has first been allowed the opportunity to consult legal counsel with respect to owner's possible rights.

- 8.05 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lots, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX DURATION AND AMENDMENT

- 9.01 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record in the county records of Ellis County, Texas, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years; provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of those Class A Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association.
- 9.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the deed records of Ellis County, Texas, without the approval of any Member or mortgagee; provided, however, that in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby. Any amendment made pursuant to this Section 9.02 shall be certified by the Declarant as having been duly approved by Declarant, and such Members if required and shall be effective only upon recondition or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of the Declaration or any other

instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 9.02 hereof, shall be proposed and adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however, (i) that any amendment which materially and adversely affects the lien status, security and interest of any mortgagee must be approved by such mortgagee, and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.
- (c) The agreement of the required percentage of the owners and where required the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

ARTICLE X

ANNEXATION AND FUTURE DEVELOPMENT

10.01 Annexation. For so long as Declarant has authority to appoint and remove any Directors and Officers of the Association, additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such annexation may be accomplished by (i) filing in the deed records of Ellis County, Texas, an approved subdivision plat describing the real property to be annexed to the Property and by including on such subdivision plat a statement that expressly sets forth the Declarant's intention to make such annexed real property subject to the provisions of this Declaration; or (ii) filing an amendment to Declaration (which has been consented to by the owners of the real property to be annexed if such real property is owned by someone other than Declarant); or (iii) amending the existing subdivision plat to include the real property to be annexed. Each owner, by acceptance of a deed to his or her Lot, shall be deemed to have consented to and approved of all such amendments to the Declaration, amendments to any existing subdivision plats and new subdivision plats placed of record which are to be subject to the provisions of the Declaration. At the expiration of the Declarant's right to appoint and remove any directors and officers of the Association, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association.

Further provisions pertaining to annexation are set forth in Paragraph 13.01.

10.02 Future Development. Notwithstanding any other provision contained herein to the contrary, and subject to applicable zoning regulation, Declarant shall have the right, for so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, to annex real property according to the procedure set forth in Section 10.01, which real property may be developed as office, retail, commercial property, apartment complexes, condominiums, attached town homes, or single family residences. At the time of such annexation, Declarant shall determine, on an equitable basis, the proportional share of the Assessments payable by and the number of votes allocated to such property, which determination will be based upon the degree to which the Occupants of said property have the right to use and are benefitted by the Common Areas. Such determination shall be made by amendment to this Declaration, which shall not require the approval of any Member or third party. Notwithstanding the foregoing, in no event shall the Owner(s) of such property annexed pursuant to this Section 10.02 be entitled to more than one (1) vote per 4 apartment units, with respect to an apartment complex.

ARTICLE XI MISCELLANEOUS

11.01 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition

subsequent or as creating a possibility of reverter.

11.02 Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

11.03 Headings. The headings of the Articles and Section hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

11.04 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

11.05 Notices. All amendments, notices, requests, objections, waivers, rejection, agreement, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, certified or registered, return receipt requested, with sufficient postage, and sent to the following addresses:

(a) Declarant: Estates of Somercrest,
802 Shady Creek
Kennendale, Texas 76060

(b) Owners: Each Owner's address as registered with the Association in accordance with the Bylaws.

Any written communication transmitted in accordance with this Section 11.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

11.06 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

11.07 Insurance.

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep all improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Texas with (i) fire, vandalism, malicious mischief and extended coverage

insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Director as appropriate for the Common Property.

- (b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association entitled to vote thereon, and, so long as the declarant has the right to appoint and remove directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Associations' Members, levy a Special Assessment. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

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

- (c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are

responsible hereunder for maintenance of the damaged or destroyed property.

- (d) In addition to the coverage described herein above, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

11.08 Indemnification and Hold Harmless.

- (a) The Association shall indemnify every officer and director against any and all expenses, including counsel fees reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being, or having been, an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers and directors liability insurance to fund this obligation.
- (b) Each Owner shall be liable to the Association for any damage to the Common Property of any type or to any equipment thereon which may be sustained by reason of the negligence of said owner, his tenants, employees, agents, customers, guests or invitee, to the extent that any such damage shall not be covered by insurance. Each Owner does further, by the acceptance of a deed, agree to indemnify each and every other Owner, and to hold harmless each and every other Owner, from any claim of any person for personal injuries or property damage occurring within or upon his lot.

ARTICLE XII
CONDEMNATION

- 12.01 Condemnation or Other Governmental Taking. If all or any part of the Common Property are taken by any authority having the power of condemnation or eminent domain, or are conveyed in lieu thereof by the association with the approval of at least seventy-five (75%) of the Class A Members and of Declarant, as long as Declarant owns at least one (1) Lot or

has the right to annex property to the Development, the award or proceeds made or collected for such taking or sale in lieu thereof are payable to the Association. The Association shall disburse or hold such award or proceeds as follows:

- (a) If the taking or sale in lieu thereof involves a portion of the Common Property on which improvements have been constructed, then unless within sixty (60) days after such taking, Declarant, as long as Declarant owns at least one (1) Lot or has the right to annex property to the Development, together with at least seventy-five (75%) of the Class A Members, decide otherwise, the Association shall restore or replace the improvements to the extent practicable, on other existing Common Property, in accordance with the plans approved by the Association, the ACC, and by Declarant. If the awards or proceeds are not sufficient to defray the cost of repair and replacement of the improvements and such deficiency cannot be appropriated from a reserve fund established for such purpose, the Association may levy one or more Special Assessments, in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. If such improvements are not repaired or restored, the Association shall retain the award or proceeds for the benefit of the Association.
- (b) If the taking or sale in lieu thereof does not involve any improvements to the Common Property, or if there are excess funds remaining after any restoration or replacement of the improvements, then the Association shall retain the award, proceeds, or excess funds for the benefit of the Association.
- (c) If the taking or sale in lieu thereof includes all or any part of the Common Property, then a court of competent jurisdiction shall apportion such award or proceeds between the Association and the Owners of the other property taken so as to give just compensation to each. In lieu of seeking judicial apportionment, (i) the Association, (ii) the Owners and their lenders of all Lots and Residences wholly or partially taken, and (iii) Declarant, as long as Declarant owns at least one (1) Lot or has the right to annex property to the Development, may mutually agree on the method of apportionment.

12.02 Condemnation of Lots.

- (a) If all or any part of a Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and the Owner elects not to restore the remainder of the Lot, then the Owner shall promptly remove any remaining improvements damaged or destroyed by such taking or conveyance and shall leave the Lot in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of the Lot remaining after such taking or conveyance is insufficient to permit the restoration of the conveyance in compliance with all application standards, restrictions, and provisions of this Declaration and all applicable, zoning, subdivision, building, and other governmental regulations, then the Owner, after

removing all remaining improvements and placing the Lot in a clean, orderly, safe, and sightly condition, may deed the remaining portion of the Lot to the Association as a part of the Common Property. Upon the conveyance by an Owner of his remaining portion of a Lot, the Owner shall not be a Member.

- (b) If any part of a Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and the Owner elects to restore the remainder of the Lot, then the Owner shall restore the remainder of the Lot in nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. The Owner shall commence the restoration within sixty (60) days after the taking or conveyance and shall proceed diligently in a good and workmanlike manner to completion.

ARTICLE XIII SPECIAL RIGHTS OF DECLARANT

The provisions set forth in this Article XIII shall prevail in the event of conflict with other provisions contained in this Declaration.

- 13.01 Rights to Annex. So long as Declarant has authority to appoint and remove any Directors and Officers of the Association, Declarant may annex additional property to become a portion of the Property and thereafter be subject to the terms, provisions and conditions of this Declaration. Declarant may exercise such right by recording a supplement to this Declaration in the Records of Ellis County, Texas subjecting such additional property to the terms and conditions hereof. No further action or approval shall be required or necessary for the Declarant to annex additional properties into the Property for the purpose of subjecting it to this Declaration. Any document subjecting additional property to the Declaration may also impose additional restrictions not found in this Declaration upon such additional property. Upon the annexation and platting of any additional property as herein provided, each lot described therein shall become a "Lot" for all purposes hereunder. Nothing herein contained shall establish any duty or obligation on the part of Declarant or any member to annex any property to this Declaration and no owner of the property excluded from this Declaration shall have any right to have such property annexed thereto.

Further provisions pertaining to annexation are set forth in Article X.

- 13.02 Specific Declarant Right to Amend Declaration. Declarant, without joinder of the Board, the Association, or the other Owners may amend this Declaration to correct any errors of to cause the Declaration to be in compliance with any City or other governmental requirement (including any requirement imposed by the Federal Housing Administration, the Veterans Administration, the Department of Housing and Urban Affairs, the Federal Home Loan

Mortgage Corporation, or the Government National Mortgage Association).

- 13.03 Easement/Access Right. During the development of the Property and subdivision, Declarant reserves a general easement over all Streets, roads, rights of way, alleys and utility, maintenance, landscaping, wall and other easements in the Property and over the Common Properties for access for the purpose of finishing development of the Property as a subdivision and as otherwise reasonably necessary to effect Declarant's rights hereunder. Such easements and rights shall expire at such time that Declarant no longer owns a Lot.
- 13.04 Assignment of Declarant Rights. Declarant may assign its rights to a successor Declarant hereunder by execution of a written document, recorded in the Real Property Records of Ellis County, Texas specifically stating that Declarant has assigned its rights as such to a designated assignee and declaring such assignee to be the new "Declarant" hereunder.
- 13.05 Replatting or Modification of Plat. From time to time, Declarant reserves the right to replat the Property or to amend or modify the Plat in order to assure a harmonious and orderly development of the Property as herein provided. Declarant may exercise such rights so long as it owns any Lot and no joinder of any other Owner shall be required to give effect to such rights, each Owner consenting Declarant's execution of any replat on such Owner's behalf. However, any such replatting or amendment of the Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for compliance with any applicable governmental regulation. Declarant's rights under this section shall expire at such time Declarant no longer owns a Lot.
- 13.06 Limitation of Declarant Liability. The Declarant shall not be responsible or liable for any deficit in the Association's funds. Declarant may, but is under no obligation to subsidize any liabilities incurred by the Association and the Declarant may, but is not obligated to, lend funds to the Association to enable it to defray its expenses, provided the terms of such loans are on reasonable market conditions at the time.
- 13.07 No Interference. So long as Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor its Board, nor any member of the Association shall take any action that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the sale of Lots. In the event there is a breach of this Section, it is acknowledged that any monetary award which may be available would be an insufficient remedy and therefore, in addition to all other remedies, the Declarant shall be entitled to injunctive relief restraining the Association, its Board or any member of the Association from further breach of this section.

ARTICLE XIV
SOMERCREST DEVELOPMENT

14.01. SomerCrest Development. This Declaration initially applies to the approximately 29.59 acre parcel of real property owned by Estates of SomerCrest, Ltd. (generally known as Estates of SomerCrest Addition). The Declarant anticipates that two other related contiguous parcels will be platted and annexed as follows: (1) the approximately 16.021 acre parcel of real estate owned by Parks of SomerCrest, Ltd. (generally known as Parks of SomerCrest) and (2) the approximately 19.487 acre parcel of real estate owned by Villas of SomerCrest, Ltd. (generally known as Villas of SomerCrest). Attached hereto as Exhibit B is the Preliminary Plat of SomerCrest (including the Estates of SomerCrest, the Parks of SomerCrest and the Villas of SomerCrest). The Preliminary Plat is attached to reference and indicate the location of the three parcels in the anticipated development. The Declarant anticipates that each of the three (3) parcels of real property will be platted separately, and as each parcel is platted and prepared for development, each said parcel will be annexed. The Declarant anticipates that the SomerCrest development will contain landscaped areas, private roads, gates, fences, park areas, detention ponds, etc. that benefit the entire annexed Property. Notwithstanding anything contained herein to the contrary, nothing in this Paragraph shall be construed to require that Declarant annex the two properties indicated herein or any additional property, or to provide any particular common area benefits.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed as provided in the acknowledgment set forth hereinafter but to be effective as of March 25, 2015.

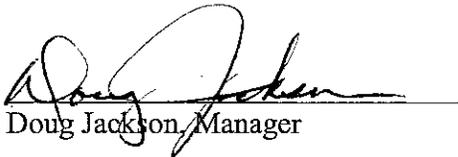
EXHIBITS:

Exhibit A - Legal Description (Estates of SomerCrest)

Exhibit B - Preliminary Plat (Estates of SomerCrest, Parks of SomerCrest and Villas of SomerCrest)

**ESTATES OF SOMERCREST, LTD.,
a Texas limited partnership**

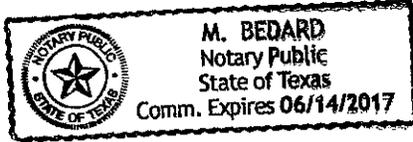
By: Jax Estates, LLC,
a Texas limited liability company

By: 
Doug Jackson, Manager

STATE OF TEXAS)

COUNTY OF Tarrant)

This instrument was acknowledged before me on May 21, 2015, by Doug Jackson, Manager of Jax Estates, LLC, a Texas limited liability company, general partner, on behalf of Estates of SomerCrest, Ltd., a Texas limited partnership.



M. Bedard
Notary Public, State of Texas
My commission expires: 6-14-2017
M. Bedard

The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration of Covenants, Conditions, Restrictions, and Easements.

IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused this Declaration to be executed this _____, day of March, 2015.

ESTATES OF SOMERCREST HOMEOWNERS ASSOCIATION, INC.,
a Texas Non-Profit Corporation

By: Douglas Jackson
Douglas Jackson, President

STATE OF TEXAS)
COUNTY OF Tarrant)

This instrument was acknowledged before me on May 21, 2015, by Doug Jackson, President of Estates of SomerCrest Homeowners Association, Inc., a Texas nonprofit corporation, on behalf of said nonprofit corporation.

M. Bedard
Notary Public, State of Texas
My commission expires: 6-14-2017
M. Bedard

AFTER RECORDING RETURN TO:

Republic Title of Texas, Inc.
Attn: Stefanie Matthews
550 Bailey Avenue, Suite 100
Fort Worth, Texas 76107

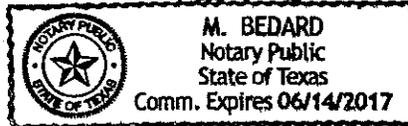


EXHIBIT A
LEGAL DESCRIPTION - ESTATES OF SOMERCREST

[ATTACHED]

EXHIBIT 'A'

BEING PART OF THAT CERTAIN TRACT OR PARCEL OF LAND CONTAINING 64.98 ACRES SITUATED IN THE ALEXANDER JENKINS SURVEY, ABSTRACT NO. 554, OF ELLIS COUNTY TEXAS, AND PART OF THAT CERTAIN CALLED 55.07 ACRE TRACT OF LAND CONVEYED TO LEZETTE L. MCREYNOLDS BY DEED AS RECORDED IN VOLUME 626, PAGE 219 OF THE DEED RECORDS OF ELLIS COUNTY, TEXAS, AND BEING ALL THAT CERTAIN CALLED 10.21 ACRE TRACT OF LAND CONVEYED TO KIM L. LEWIS BY DEED AS RECORDED IN VOLUME 1498, PAGE 231 OF DEED RECORDS OF ELLIS COUNTY, TEXAS, AND BEING ALL OF THAT CERTAIN 0.1162 ACRE TRACT DESCRIBED IN VOLUME 341, PAGE 2, DEED RECORDS, ELLIS COUNTY TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD FOUND IN THE SOUTHWEST CORNER OF SAID 10.21 ACRE TRACT AND THE SOUTHEAST CORNER OF SOMERSET ADDITION, AN ADDITION TO THE CITY OF MIDLOTHIAN;

THENCE NORTH 1 DEGREE 33 MINUTES 00 SECONDS WEST (BASIS OF BEARINGS) ALONG THE COMMON LINE OF SAID SOMERSET ADDITION AND SAID 10.21 ACRE TRACT, A DISTANCE OF 1501.18 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

THENCE NORTH 34 DEGREES 12 MINUTES 03 SECONDS EAST, CONTINUING ALONG THE COMMON LINE OF SAID SOMERSET ADDITION AND SAID 10.21 ACRE TRACT, A DISTANCE OF 167.11 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER, SAID POINT BEING THE NORTHEAST CORNER OF SAID SOMERSET ADDITION AND THE SOUTHEAST CORNER OF A TRACT OWNED BY FRITCHETT FAMILY TRUST BY DEED AS RECORDED IN VOLUME 2193, PAGE 1884 OF THE DEED RECORDS OF ELLIS COUNTY, TEXAS;

THENCE NORTH 0 DEGREES 52 MINUTES 32 SECONDS WEST ALONG THE COMMON LINE OF SAID 10.21 ACRE TRACT AND SAID FRITCHETT TRACT, A DISTANCE OF 312.67 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER IN MOUNT ZION ROAD, SAID POINT BEING IN THE SOUTHERLY LINE OF A CALLED 1.031 ACRE TRACT OF LAND CONVEYED TO KIM L. LEWIS BY DEED RECORDED IN VOLUME 731, PAGE 149 OF THE DEED RECORDS OF ELLIS COUNTY, TEXAS, AND THE NORTHWEST CORNER OF SAID 10.21 ACRE TRACT;

THENCE NORTH 32 DEGREES 47 MINUTES 38 SECONDS EAST, A DISTANCE OF 21.20 FEET TO A 5/8 INCH IRON ROD FOUND FOR CORNER, SAID POINT BEING THE SOUTHEAST CORNER OF SAID 1.031 ACRE TRACT AND BEING THE SOUTHWEST CORNER OF A CALLED 4.885 ACRE TRACT OF LAND CONVEYED TO BLVO MCDONALD LLC BY DEED RECORDED IN VOLUME 2518, PAGE 249 OF THE DEED RECORDS OF ELLIS COUNTY, TEXAS;

THENCE NORTH 88 DEGREES 15 MINUTES 05 SECONDS EAST ALONG THE COMMON LINE OF SAID 10.21 ACRE TRACT AND SAID 4.885 ACRE TRACT PASSING THE SOUTHEAST CORNER OF SAID 4.885 ACRE TRACT, A DISTANCE OF 123.41 FEET TO A P.K. NAIL SET FOR CORNER, SAID POINT BEING THE NORTHEAST CORNER OF SAID 10.21 ACRE TRACT AND THE NORTHWEST CORNER OF SAID 56.17 ACRE TRACT;

THENCE NORTH 88 DEGREES 17 MINUTES 00 SECONDS EAST, A DISTANCE OF 533.19 FEET TO A P.K. NAIL SET FOR CORNER;

THENCE SOUTH 00 DEGREES 52 MINUTES 32 SECONDS EAST, 96.95 FEET TO A SET 1/2 INCH IRON ROD;

THENCE AROUND A CURVE TO THE RIGHT HAVING A RADIUS OF 1000 FEET, A CHORD OF SOUTH 9 DEGREES 00 MINUTES 24 SECONDS WEST, 343.24 FEET, FOR AN ARC OF 344.99 FEET TO A SET 1/2 INCH IRON ROD;

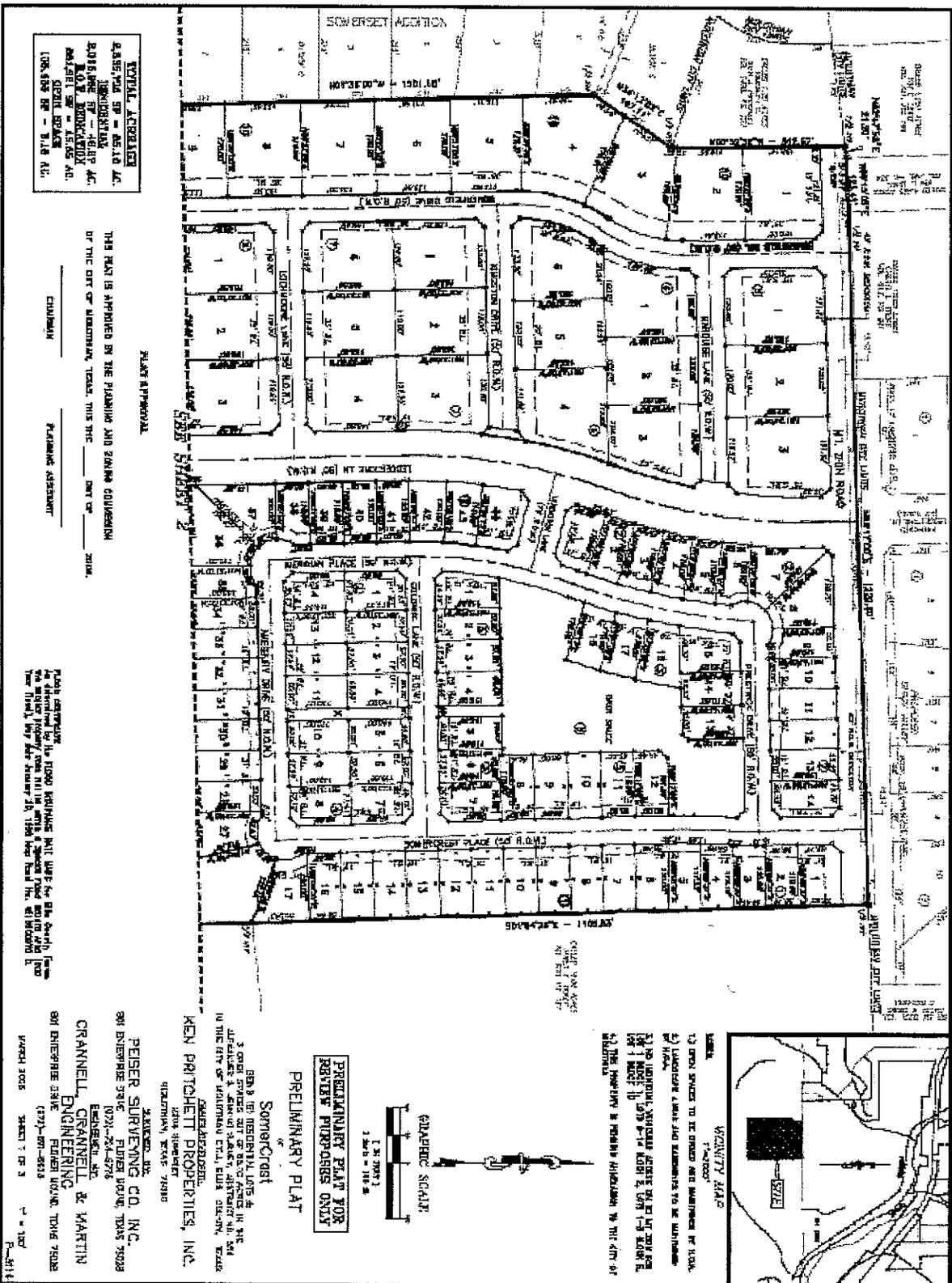
THENCE AROUND A CURVE TO THE LEFT HAVING A RADIUS OF 1000 FEET, A CHORD OF SOUTH 8 DEGREES 40 MINUTES 14 SECONDS WEST, 354.88 FEET, FOR AN ARC OF 356.76 FEET TO A SET 1/2 INCH IRON ROD;

THENCE SOUTH 1 DEGREE 33 MINUTES 00 SECONDS EAST, 1167.77 FEET TO A SET 1/2 INCH IRON ROD;

THENCE SOUTH 84 DEGREES 16 MINUTES 00 SECONDS WEST, 652.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 1248933.90 SQUARE FEET OR 29.59 ACRES OF LAND.

EXHIBIT B
PRELIMINARY PLAT OF SOMERCREST
(INCLUDING ESTATES OF SOMERCREST,
PARKS OF SOMERCREST AND VILLAS OF SOMERCREST)

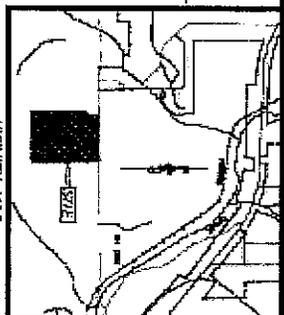
[ATTACHED]



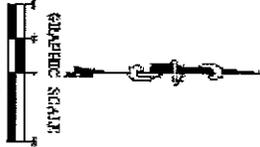
TOTAL AREA:
 4,850,716 SQ. FT. ± 65.10 AC.
 2,011,000 SQ. FT. ± 46.00 AC.
 2,839,716 SQ. FT. ± 65.10 AC.
 1,000,000 SQ. FT. ± 22.96 AC.
 1,839,716 SQ. FT. ± 42.14 AC.

PLAT APPROVAL
 THIS PLAN IS APPROVED BY THE PLANNING AND ZONING COMMISSION
 OF THE CITY OF WASHINGTON, TEXAS, THIS THE _____ DAY OF _____ 2010.
 CHAIRMAN _____ PLANNING ASSISTANT _____

Each structure as determined by the 10000 SQUARE FEET RULE for the zoning district shall be subject to the rules and regulations of the City of Washington, Texas, and shall be subject to the rules and regulations of the City of Washington, Texas.



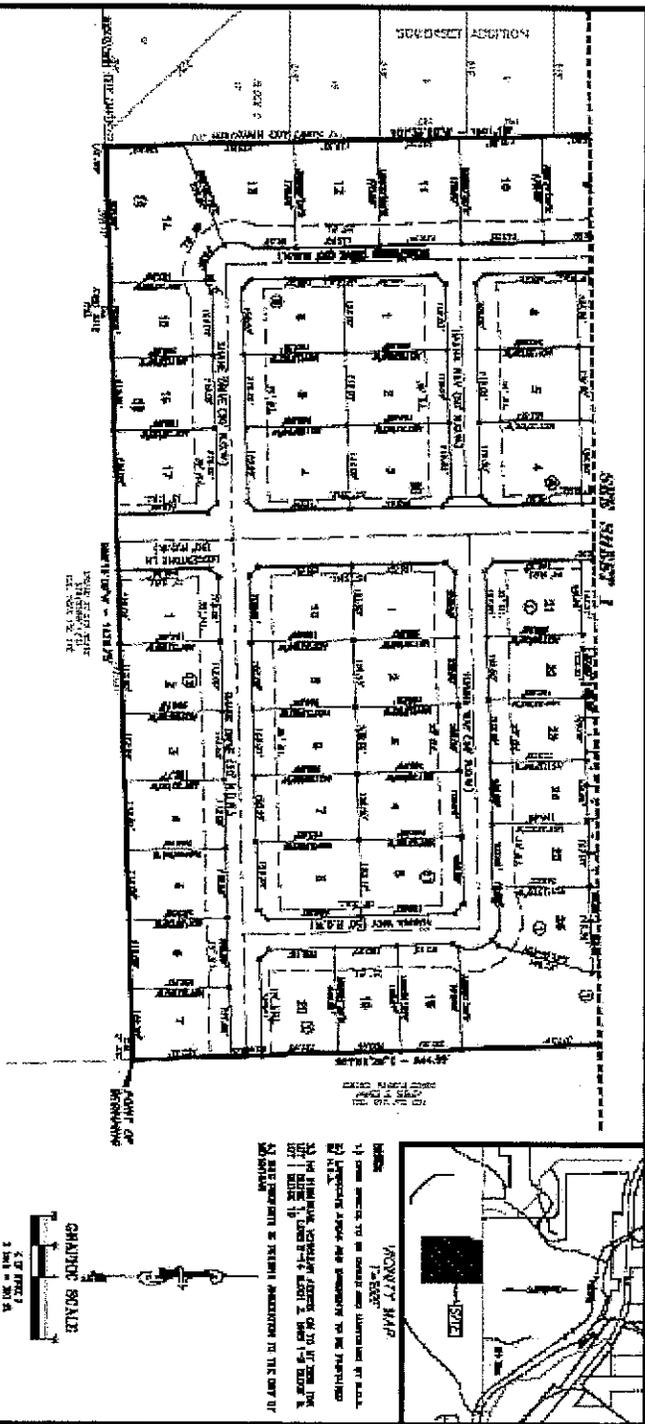
- NOTES:**
- 1) OPEN SPACES TO BE DEDICATED AND MAINTAINED BY THE LANDOWNER.
 - 2) LANDSCAPE LIGHTS AND SIGNAGE TO BE MAINTAINED BY THE LANDOWNER.
 - 3) NO UNDESIRABLE STRUCTURES TO BE CONSTRUCTED ON THE PROPERTY.
 - 4) THE PROPERTY IS BEING DEVELOPED BY THE CITY OF WASHINGTON.



PRELIMINARY PLAT FOR REVIEW PURPOSES ONLY
PRELIMINARY PLAT
 OF
SOMERSET

3.00 AC. ±, 100,000 SQ. FT. ±
 3.00 AC. ±, 100,000 SQ. FT. ±
 IN THE CITY OF WASHINGTON, TEXAS.
KEN PRITCHETT PROPERTIES, INC.
 2000 W. 10TH ST.
 WASHINGTON, TEXAS 75781

PEISER SURVEYING CO., INC.
 801 DUNSMUIR ST., FURBER HOUSE, TEXAS 75008
 (817) 221-4274
CRANNELL ENGINEERING & MARTIN
 801 DUNSMUIR ST., FURBER HOUSE, TEXAS 75008
 (817) 691-9515
 SHEET 2 OF 3



LOT NO.	AREA (SQ. FT.)	AREA (SQ. YD.)	AREA (AC.)
1	10,000	230	.23
2	10,000	230	.23
3	10,000	230	.23
4	10,000	230	.23
5	10,000	230	.23
6	10,000	230	.23
7	10,000	230	.23
8	10,000	230	.23
9	10,000	230	.23
10	10,000	230	.23
11	10,000	230	.23
12	10,000	230	.23
13	10,000	230	.23
14	10,000	230	.23
15	10,000	230	.23
16	10,000	230	.23
17	10,000	230	.23
18	10,000	230	.23
19	10,000	230	.23
20	10,000	230	.23
21	10,000	230	.23
22	10,000	230	.23
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24	10,000	230	.23
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28	10,000	230	.23
29	10,000	230	.23
30	10,000	230	.23
31	10,000	230	.23
32	10,000	230	.23
33	10,000	230	.23
34	10,000	230	.23
35	10,000	230	.23
36	10,000	230	.23
37	10,000	230	.23
38	10,000	230	.23
39	10,000	230	.23
40	10,000	230	.23
41	10,000	230	.23
42	10,000	230	.23
43	10,000	230	.23
44	10,000	230	.23
45	10,000	230	.23
46	10,000	230	.23
47	10,000	230	.23
48	10,000	230	.23
49	10,000	230	.23
50	10,000	230	.23
51	10,000	230	.23
52	10,000	230	.23
53	10,000	230	.23
54	10,000	230	.23
55	10,000	230	.23
56	10,000	230	.23
57	10,000	230	.23
58	10,000	230	.23
59	10,000	230	.23
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61	10,000	230	.23
62	10,000	230	.23
63	10,000	230	.23
64	10,000	230	.23
65	10,000	230	.23
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69	10,000	230	.23
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71	10,000	230	.23
72	10,000	230	.23
73	10,000	230	.23
74	10,000	230	.23
75	10,000	230	.23
76	10,000	230	.23
77	10,000	230	.23
78	10,000	230	.23
79	10,000	230	.23
80	10,000	230	.23
81	10,000	230	.23
82	10,000	230	.23
83	10,000	230	.23
84	10,000	230	.23
85	10,000	230	.23
86	10,000	230	.23
87	10,000	230	.23
88	10,000	230	.23
89	10,000	230	.23
90	10,000	230	.23
91	10,000	230	.23
92	10,000	230	.23
93	10,000	230	.23
94	10,000	230	.23
95	10,000	230	.23
96	10,000	230	.23
97	10,000	230	.23
98	10,000	230	.23
99	10,000	230	.23
100	10,000	230	.23

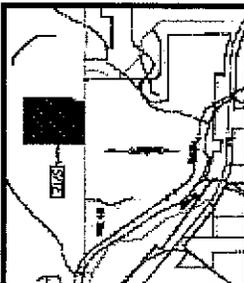
LOT NO.	AREA (SQ. FT.)	AREA (SQ. YD.)	AREA (AC.)
1	10,000	230	.23
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66	10,000	230	.23
67	10,000	230	.23
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73	10,000	230	.23
74	10,000	230	.23
75	10,000	230	.23
76	10,000	230	.23
77	10,000	230	.23
78	10,000	230	.23
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95	10,000	230	.23
96	10,000	230	.23
97	10,000	230	.23
98	10,000	230	.23
99	10,000	230	.23
100	10,000	230	.23

TOTAL AREA
 100,000 SQ. FT. - 2.30 AC.
 100,000 SQ. FT. - 2.30 AC.

THIS MAP IS PREPARED BY THE MEASUREMENT AND SURVEYING DEPARTMENT
 OF THE CITY OF MEMPHIS, TENNESSEE, THIS DATE OF _____ 19____.
 DISTRICT _____ PLANNING DEPARTMENT

PREPARED BY: PETERSON SURVEYING CO., INC.
 1000 SOUTH MAIN STREET, MEMPHIS, TENNESSEE 38103
 (901) 521-1000
 ENGINEER: DRANNELL, DRANNELL & MARTIN
 ENGINEERING
 1000 OVERSEAS DRIVE
 (901) 521-1000
 SHEET 2 OF 2 1" = 100'
 5-2114

PRELIMINARY PLAT FOR
 REVIEW EMBROIDER CROSS
 of
 PRELIMINARY PLAT



NOTES:
 1. SEE SHEET 1 OF 2 FOR COMPLETE SET OF PLANS.
 2. ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.
 3. THE MEASUREMENTS WERE MADE BY THE SURVEYOR IN THE FIELD IN 19____.
 4. THE MEASUREMENTS WERE MADE BY THE SURVEYOR IN THE FIELD IN 19____.
 5. THE MEASUREMENTS WERE MADE BY THE SURVEYOR IN THE FIELD IN 19____.