

CALDWELL'S CREEK

Homeowners Association

Deed Restrictions

DEDICATION AND RESTRICTIONS

(Filed May 9, 1994)

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF TARRANT

That, CALDWELL'S CREEK, LTD, a Texas Limited Partnership called "Declarant", is the owner and developer of the following described parcel of land lying and being situated in the City of Colleyville, County of Tarrant, State of Texas; and being described as follows:

DESCRIPTION OF PROPERTY

BEING all that certain tract, parcel, or lot of land situated in the Harrell Hughes Survey, Abstract No. 656 and the H.F. Wall Survey, Abstract No. 1973, in the City of Colleyville, Tarrant County, Texas, and being that certain 57.968 acre tract of land described in Volume 7058, Page 164, Deed Records, Tarrant county, Texas;

BEGINNING at a 3/8" iron rod found in the apparent south right-of-way line of John McCain Road for the northeast corner of said 57.968 acre tract and being by description N 00°38'10" W, 88.7 feet from the northeast corner of said HARRELL HUGHES SURVEY;

THENCE S 00° 37'21" E, 892.22 feet with the east line of said 57.968 acre tract and the east line of said HARRELL HUGHES SURVEY to a 1/2" iron rod with cap stamped "HORJZON SURVEY CO." set in concrete in the northwest line of a 100' railroad right-of-way as described in Volume 10146, Page 640, Deed records, Tarrant County, Texas, from which a 1/2" iron rod found bears S 00° 37'20" W, 1.25 feet, for the southeast corner of said 57.968 acre tract;

THENCE S 66° 25'44" W, with said northwest line passing a 1/2" iron rod found at 2232.42 feet, for the southwest corner of said 57.968 acre tract, and continuing for a total distance of 2248.05 feet to a 1/2" iron rod with cap stamped

"HORJZON SURVEY CO." set in concrete being in the centerline of Caldwell-Hughes Road; THENCE N 00° 00'00" E, 1677.39 feet with said centerline of Caldwell-Hughes Road to a ½" iron rod with cap stamped "HORJZON SURVEY CO." set in concrete in the aforesaid apparent south right-of-way line of John McCain Road;

THENCE N 89° 58'25" E with said apparent south right-of-way, passing a ½" iron rod found at 14.50 for the northwest corner of the aforesaid 57.968 acre tract and continuing for a total distance of 1567.03 feet to a ½" iron rod with cap stamped "HORJZON SURVEY CO." set for the point of curvature of a non-tangent curve to the left having a central angle of 17° 43'10", a radius of 839.29 feet, a tangent length of 130.82 feet, a chord bearing of N 81° 06'58" E, and a chord distance of 258.53 feet;

THENCE an arc length of 259.56 feet with said curve and said apparent south right-of-way to a ½" iron rod with cap stamped "HORJZON SURVEY CO." set;

THENCE N 72° 14'47" E, 239.74 feet with said apparent south right-of-way to the POINT OF BEGINNING and containing 58.508 acres (2,548,592 square feet) of land more or less.

And according to the map records in Cabinet A; Slide 1496 - Caldwell's Creek Addition of the Map and Plat Records, Tarrant County, Texas, does in order to provide for a uniform building program upon said property hereinabove described, and to assure the present and future owners that said subdivision will be improved into a desirable residential section, does hereby impress upon said property the following restrictive covenants, which will run with the land and shall be binding on all persons claims under it, as well as upon all persons to whom may own, lease or occupy said land or any part thereof for a term of fifty (50) years from the date that this Declaration is recorded at which time said covenants shall be automatically extended for successive period of ten (10) years unless by vote of a seventy percent (70%) of the then owners of the lots, it is agreed to change said covenants in whole or in part.

If any person shall violate or attempt to violate any of the covenants herein, any person or persons owning any real property situated in said development or subdivision and the undersigned (whether still the owner of any such lots or not) shall have the right to prosecute any procedure at law or in equity any person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violations. Furthermore, such plaintiff may by order of the court, enter upon the property and remedy such violation. The cost thereof shall attach to the property as a lien to be paid in full out of the subsequent sale of property, and shall, additionally, become the personal or corporate obligation of the owner of record of the Lot or Lots in violation of the Covenants herein.

Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

All utility, sanitary sewer service, and emergency access easements are hereby dedicated to the Public unless specifically stated otherwise in the granting instruments filed of record. However, Common Areas, and Common Area Access Easements shall be for the use of the Lot Owners encompassed herein and shall not be construed as being for the use of the general public unless expressly stated in the granting instrument.

SECTION I RESIDENTIAL USE

Such lots within the subdivision, and each of them, are to be used for single family residential purposes only. No building or structure intended for or adapted to business purposes, shall be erected, placed, permitted, or maintained on such premises, or any part thereof such as hospitals, duplex houses and apartment houses. The covenant shall be construed as prohibiting the engaging in or practice of any commerce, industry, business, trade or profession on any Lot, tract or parcel of and within the Subdivision. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or on any lot. All mineral rights shall belong and shall continue to belong to the limited partnership of Caldwell's Creek LTD.

The restrictions on use herein contained shall be cumulative of, and in addition to such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations and ordinances of the City of Colleyville, Texas, or any other governmental authority having jurisdiction over said properties. No building structure on any lot shall exceed two and one half (2 ½) stories in height.

The garage as designated by architectural plans or any out building as may be specified on any lot shall not be used as a residence or living quarters, except by servants engaged on the premises or by members of the immediate family of occupants. A garage shall be used solely by the owners or occupant of the lot upon which the garage is located.

No building materials or temporary building of any kind or character, including, but not limited to tents, shacks, garages or barns, shall be placed or stored upon the property until the owner is ready to commence improvements, and then such materials or temporary building shall be placed within the property lines of the lot or parcel of land on which the improvements are to be erected, and shall not be placed in the streets or between the curb and property line; and any such temporary building structure of any kind shall not be used for other than construction purpose. Any such building shall be maintained in a neat, attractive and clean condition.

Only one residence shall be constructed on each lot. This provision shall not, however, prohibit the construction of a residence on a portion of two or more lots as shown by the plat of the subdivision, provided such portion constitutes a home site as defined as follows:

Parts of two or more adjoining lots may be designated as one home site, provided the total footage of the adjoining lots shall not be less than the minimum square feet required by the City of Colleyville for the applicable zoning within the subdivision.

As specified "house" or "residence" herein with reference to building lines shall include galleries, porches, porte-cocheres, gazebos, projections and every other permanent part of the improvements. Steps, terraces and planters outside of building lines will be permitted, however, provided that these elements may not extend higher than two feet (2') above finished grade lines at the house.

No building or structure upon any lot may be permitted to fall into disrepair. Buildings must at all times be kept in good condition, adequately painted or otherwise finished.

SECTION 2 LANDSCAPING, SPRINKLER SYSTEM AND RETAINING WALLS OR THE LIKE

Each lot on which a residential dwelling is constructed shall have and contain an underground water sprinkler system for the purpose of providing sufficient water to preserve and maintain the landscaping in a healthy and attractive condition to the front, side and rear yard areas including those situated outside of the fences, walls or hedges. Landscaping of a lot shall be completed within sixty (60) days after the date on which the main structure is ninety percent (90%) complete and shall include the planting of a minimum of eight (8) trees with a minimum diameter of four (4) inches measured above the base of the tree trunk. The trees shall be of a variety approved by the Architectural Control Committee. Acceptable varieties of trees shall include the following: Live Oak - Red Oak - Red Maple - Sweet Gum - Southern Pine - Pistachio - Bradford Pear. Other varieties may be acceptable with approval by the Architectural Control Committee prior to planting. However, decorative plants (such as crepe myrtle - yaupon holly - cherry laurel) may be used for landscaping but shall not be included as acceptable varieties of trees. Each lot owner shall keep, preserve and maintain the landscaping in a healthy and attractive condition. All retaining walls, planter walls, mail boxes or decorative fences located within ten feet (10') of and parallel to the front building line of each lot, shall be stone, brick or stone or brick with wrought iron and shall require approval by the Architectural Control Committee. Furthermore, all retaining walls, planter walls, mailboxes, or fences located adjacent to or within ten feet (10') of any Common Open Space shall require approval by the Architectural Control Committee.

The living area of the house or residential structure constructed as a one story residence on any homesite, exclusive of porches and garage or breezeways attached to the main dwelling, shall be not less than 3,000 square feet, with a deviation of five percent (5%) with approval by the Architectural Control Committee; and-in the case of more than one story, the requirements as to living area shall be at least ten percent (10%) more, or a total of 3,300 for the total living area.

All dwellings or building structures shall be constructed of brick, brick veneer, stone, stone veneer, stucco or other exterior materials approved by the Architectural Control Committee to the extent of at least eighty percent (80%) of the total outside area. Openings and glass area shall be considered to be of the material which is on either side of the opening or glass area.

The construction plans and specifications for each dwelling shall include the installation of smoke detectors and such other security devices which, from time to time, become technologically feasible for residential use.

SECTION 4 GARAGES

Each residential dwelling erected shall provide garage space for a four car garage maximum capacity, and the minimum space for a two car capacity of conventional automobiles. All garage doors shall be equipped with an automatic and remote controlled electronic door opener; all garage doors shall be closed at all times when not in use. Garage structures may face the front property line only if they are constructed a minimum of fifty feet (50') from the front building line or screened from view from the street and, in either case, approved by the Architectural Control Committee. Garages on corner lots shall be rear entry with a masonry wing wall matching the exterior material of the residential dwelling being a minimum of eight feet (8') in length and six feet (6') high and include a mechanized entry gate if the driveway entrance is adjacent to the side street. Garages with the entry located on the front side within thirty feet (30') of the front building line shall have a masonry wing wall matching the exterior of the residential dwelling being a minimum of eight feet (8') in length and six feet (6') high and shall include a mechanized entry gate. All garage entrances located at the rear of the residence may be either side or rear entry and shall not require a wing wall and mechanized entry gate. Furthermore, any garage or garage entry constructed adjacent to any Common Open Space shall require appropriate screening as determined by the Architectural Control Committee. Carports are not encouraged but may be permitted if, in the sole opinion of the Architectural Control Committee, the exterior surface and appearance will substantially compare with a garage and if no storage of items, which would otherwise be visible, will occur thereunder. Any and all proposed garage or carport plans and specifications must be submitted to the Architectural Control Committee for review and approval.

SECTION 5 ROOF AND EXTERIOR SURFACE

All roofs shall be not less than an 8/12 pitch and shall be constructed of premium grade asphalt shingles, slate, copper, clay tiles, reinforced masonry tiles or other materials approved by the Architectural Control Committee. The color, the manufacturer and the quality of all roofing materials must be approved in writing by the Architectural Control Committee. In that all exterior surfaces of any structure within the subdivision shall be constructed of glass, brick and other materials the Architectural Control Committee is specifically authorized to require a continuous, uniform surface with respect to all improvements which directly affect the appearance and image of the structure. Installation of all uncommon types of exterior items and surfaces such as address numbers or external ornamentation, lights, mail chutes, exterior paint or stain shall be subject to prior approval of the Architectural Control Committee. All Types of antennas (including without limitation radio or television transmitting or receiving antennas) shall be installed within the residence or structures so that no antennas are visible from the streets, neighboring lots or Common Open Space. Utility lines, clothes lines, garbage cans, equipment wood piles, or storage piles shall be enclosed to conceal them from the view of neighborhood lots, Common Open Spaces and streets. Plans for all enclosures of this nature must be approved by the Architectural Control Committee prior to construction. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. Any waiver of these restrictions shall not constitute a waiver as to other lots or lines or antennas.

SECTION 6 LOCATION OF RESIDENTIAL STRUCTURE

No building shall be erected on any lot nearer to the front property line or nearer to the side street property line than the building lines shown on the recorded plat. In any event, no building shall be located nearer than thirty feet (30') to the front property line, or nearer than fifteen feet (15') to any side street property line. No building shall be located nearer than ten feet (10') to any interior side property line. No building whether permanent or temporary, may be placed in a utility easement. On corner lots, houses or residences shall face the street from which the greater building line setback is shown on the recorded Plat, or as otherwise determined by the Architectural Control Committee.

SECTION 7 CONCRETE DRIVEWAY, APPROACHES AND SIDEWALKS

Driveway locations must be coordinated with locations of electrical transformer in easements alongside lot lines. Specification for the exact location of driveways and transformers will be furnished by the Granter. Concrete driveways shall have expansion joints not more than twenty feet (20') apart, with an expansion joint at the back side of the driveway and adjacent to the sidewalk and approach. The width of driveway (not less than twelve feet (12')) shall flare to an adequate width but shall not encroach past the property line. The curb shall be sawed (not broken) and the drive approach constructed in such a manner as to conform with the City of Colleyville's specifications. All city sidewalks, if required will be of a broomed or brushed finish (no washed aggregate finish). The walks from the street curb to the residence shall have a minimum width of four feet (4'). All walks required by the City of Colleyville will be constructed according to city specifications and shall have a minimum width of four feet (4'). The four-foot (4') section of sidewalks and driveways in line with the city sidewalk shall match the broom or brushed finish of the city sidewalk.

SECTION 8 FENCES, WALLS, HEDGES AND SIGNS

Any Front fence on Lots I through 12 of Block I shall be constructed a minimum of six feet (6') behind the private drive (parallel to John McCain Road) and shall be constructed of brick, natural stone or wrought iron and shall be approved by the Architectural Control Committee. On all other lots, no fence, wall or hedge shall be placed on any lot in the subdivision nearer to any front or to any side street than is permitted for the house on said lot and no fence, wall or hedge located between interior lot lines and building setback lines shall be higher than eight feet (8') from the ground unless it is an integral part of the house or building structure and approved by the Architectural Control Committee. All wood fences shall be constructed with the "finish" surface to the outside but shall not be constructed on the front forty feet (40') of any lot or adjacent to any Common Open Space. On corner lots, wood may be used as an integral part of the fence facing the side street if approved in writing by the Architectural Control Committee. However, on adjacent lots the builder of the Common Fence may select the direction of the "finish" surface but may not encroach on the adjacent lot without prior consent by the adjacent lot owner. No wire or chain link fence is permitted if exposed to view from a street, adjacent lot, or Common Open Space and shall not exceed the height of the exterior screening fence or structure. All fencing shall be approved by the Architectural Control Committee prior to construction. Should a hedge, shrub, tree, or other planting be so placed, or afterward grow, so as to encroach upon adjoining property, such encroachment shall be removed upon request of the owner of the property or the Declarant or his successor. Should any encroachment be upon a right-of-way or easement, it shall be removed promptly upon request of the Declarant or any authority owning easement rights. Such encroachment is wholly at the risk of the owner and removal shall be solely at his expense. No sign or signs shall be displayed to the public view on any residential lot, except for (a), (b), and (c) listed below:

- a. Any builder, during the applicable initial construction and sales period, may: utilize one professional sign (of not more than twelve square feet (12) in size) per lot for advertising and sales purposes;
- b. thereafter, a dignified "for sale" sign (of not more than six square feet (6) in size) may be utilized by one owner of the respective residential lot for the appreciable sale situation; and
- c. development related signs owned or erected by the Declarant shall be permitted.

SECTION 9 GARBAGE AND TRASH COLLECTION

No residential lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All garbage shall be kept in sanitary containers in appropriate locations which may be specified by the Architectural Control Committee. Garbage containers shall be situated and enclosed and screened so as not to be visible from any residential street unless otherwise directed by the City of Colleyville.

If after ten (10) days prior written notice an Owner shall fail to: (a) control weeds, grass and/or other unsightly growth; (b) remove trash, rubble, building and construction debris; or (c) exercise reasonable care or conduct to prevent or remedy unclean, untidy or an unsightly condition, then Declarant shall have the authority and right to go onto said lot for the purpose of mowing and cleaning said lot and shall have the authority and right to assess and collect from the Owner of said lot a reasonable fee for mowing or cleaning said lot on each respective occasion of such mowing or cleaning. The assessment, together with such interest thereon and cost of collection thereof, shall be a charge on the land and shall be a continuing lien upon each lot against which each such assessment is made. Each such assessment, together with interest thereof and costs of collection thereof, shall also be the continuing personal obligation of the person who was the Owner of such lot at the time when the assessment occurred. The lien securing any such assessment shall only be subordinate and inferior to the lien of any mortgage and any renewals or extensions thereof existing prior to the assessment date.

SECTION 10 STORAGE OF VEHICLES AND EQUIPMENT

No vehicles may be stored where visible from the streets, adjacent lots or Common Open Space. No non-motorized equipment such as, but not limited to, camper-trailers, camper-tops, boats or trailers shall be stored or parked where visible from the streets, adjacent lots or Common Open Space. No gas engines shall be operated in motor homes or other vehicles while being stored or parked on a lot or in the street adjacent to a lot.

Such violating vehicles and equipment may be towed and impounded at the expense of the offending property owner twenty-four (24) hours after delivery of written notice to the mailing address of the property owner or inhabitant thereof.

SECTION 11 OFFENSIVE ACTIVITIES

No noxious, loud or offensive activity as determined by Declarant or his successors shall be conducted on any portion of the Properties that will adversely affect the peace, quiet, comfort or serenity of the other Lot Owners or Residents. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential lot, except that not more than two (2) domestic household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No Lot shall improperly discharge (as determined by Declarant or his successors) water, waste materials, chemicals or other materials onto the adjacent Lots, Common Open Space or Streets.

SECTION 12 EASEMENTS; UTILITIES

Easements and access easements for the installation and maintenance of utilities, screening fence and drainage facilities are reserved as shown on the recorded subdivision plat. No aerial utility facilities of any type (except meters, risers, service pedestals, pre-existing power poles and lines, and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the properties whether upon individual lots, easements, streets, or rights-of-way of any type, either by the utility company or any other person or entity. All utility services including but not limited to water, sewer, gas, electricity and telephones shall be buried underground unless otherwise required by the Declarant, a Public Utility Company or by the City of Colleyville.

All utility meters, pool equipment, air conditioning compressors and similar items must be visually screened from streets, adjacent lots and Common Open Space located in the areas designated by the Architectural Control Committee. Pursuant to requirements by the Utility Company providing electricity for Caldwell's Creek, the following provisions and covenants are to run with the land within the properties with the same force and effect as all other Covenants and Restrictions herein:

Electric service of the type known as 120/240 volt, single phase, 3 wire, 60 cycle, alternating current has been made available to the Lot hereby conveyed by means of underground facilities, at a cost in excess of the cost of service provided by the usual and standard overhead facilities, and each Owner acknowledges for himself, his heirs, successors, and assigns, that electric service of any character other than that hereinabove described will not be available except at added cost to such Owner in accordance with the Rules and Regulations for Electric Service of the company providing electricity for Caldwell's Creek. Since electric service is to be furnished to each of the Lots solely by underground facilities, each Owner agrees for himself, his heirs, successors and assigns, that he will at his own expense, install and maintain the necessary underground facilities, to connect the Owner's installation with the service wire to the Utility Company providing electricity at the point of delivery of electric energy. Gas service has been provided at the designated point adjacent to each lot and shall be connected to the residence in a similar manner.

SECTION 13 ARCHITECTURAL CONTROL COMMITTEE

No building or structure shall be erected, placed, or altered on any residential lot in this subdivision until a complete set of building plans (which shall clearly indicate all exterior materials) and a plat of the location of such building shall have been delivered to the Architectural Control Committee designated as hereinafter provided, and until such building plan and plot shall have been approved in writing by the Architectural Control Committee as being in conformity and harmony with the external design and location of the existing structures of the subdivision and in compliance with the restrictions herein contained. The plot plan and architectural plan shall be returned to the owner of the lot after approval of the Architectural Control Committee has been appropriately endorsed thereon. The Declarant shall have the authority to appoint the Architectural Control Committee and to remove without cause any person serving on the Architectural Control Committee. The Architectural Control Committee shall consist of not less than two nor more than three members, and the Declarant shall also have the authority to fill any vacancies in the Architectural Control Committee. The Architectural Control Committee is authorized to delegate to one or more representatives authority to perform the duties of the Architectural Control Committee set forth herein. In the event that the Architectural Control Committee should at any time fail or refuse to appoint a successor Committee, the owners of a majority of the lots included within said subdivision, as determined by the number of lots and not by the number of owners, shall have the right to elect or appoint, from time to time, a successor Architectural Control Committee. In the event the Architectural Control Committee, or its designated representative, fails to approve or disapprove any building plans, specifications and plot plans within fifteen (15) working days after the same are submitted to it, and if all terms contained in these Restrictions have been complied with, the Architectural Control Committee shall be deemed to have approved such plans, specifications and plot plan to the extent that they comply with these Restrictions. The Architectural Control Committee shall in no event be liable in damages for any action of failure or refusal to act pursuant to the provisions hereof. The Architectural Control Committee shall receive no fees or compensation for its services. The initial Architectural Control Committee shall consist of two or more persons to be appointed by the Declarant.

SECTION 14 INGRESS -EGRESS

Each owner of a lot agrees for himself, his heirs, assigns or successors in interest that he will permit free and reasonable access by the Declarant or the owner of adjacent or adjoining lots containing a divisional wall, when such access is essential for the construction, reconstruction, refinishing, repair, maintenance, or alteration of said divisional wall or any Common Area structure or facility. The access shall be limited to an area not more than ten feet (10') in width along or parallel to the property line. Access shall only be at reasonable times and shall be permitted only after written notice has been given to the lot owner stating the purpose of the access. In no event shall such access be deemed to permit entry into the interior portions of any dwelling. Any damage caused by such access will be repaired at the expense of the owner causing such damage.

SECTION 15 COVENANT TO COMPLETE CONSTRUCTION

Each and every Owner hereby covenants to begin construction of a single-family residential dwelling within one (1) year following the date of closing on the acquisition of any lot within the subdivision. Construction shall be deemed to begin when (a) architectural plans have been approved by the Architectural Control Committee; (b) building permits have been issued by the City of Colleyville; and (c) physical construction of a single family dwelling has commenced. If construction has not begun within one (1) year following the date of closing, the Developer shall have the right to re-purchase the lot for the amount of the original purchase price paid by the owner thereof. The right to re-purchase that lot shall terminate when construction has begun as described herein.

Each and every Owner hereby covenants to complete the construction within six (6) months after construction thereof has begun. Completion shall occur when a Certificate of Occupancy is issued and all Deed Restrictions controlling the construction have been complied with in full. However, the Architectural Control Committee may extend the construction period by providing written notice if deemed reasonable and necessary by the Architectural Control Committee.

This covenant to complete construction may be enforced by the Developer or Developer's successor in interest or any other Owner. The costs of enforcement shall be borne by the non-complying lot owners and shall include but not be limited to reasonable legal fees and related costs. All costs of enforcement shall attach to the lot as a lien thereto and shall also become the personal debt of the owner of record of the lot. Provided, however, the failure to complete construction shall be a violation of Deed Restrictions as provided in Section 19. ENFORCEMENT and shall be subject to the terms and conditions of that Section.

SECTION 16 POWER OF ATTORNEY

Each and every Owner hereby makes, constitutes and appoints Declarant as their true and lawful attorney in fact for them in their name, place and stead for their use and benefit:

- A. To exercise, do, or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Properties;
- B. To sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms of this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s), and restriction(s) as Declarant shall deem necessary, proper and expedient under the existing **circumstances and conditions;**
- C. The rights, powers and authority of said attorney in fact to exercise any and all of the rights and Powers herein granted shall commence and be in full force upon recordation of this Declaration in the Tarrant County Clerk's Office and shall remain in full force and effect thereafter until either (1) the third (3rd) anniversary of the recordation of this Declaration or (2) Declarant no longer owns lots within the property, whichever occurs first. Provided, however, Declarant may assign any and all of the rights and power herein granted to a Homeowners Association (as defined in Section 27).

SECTION 17 DURATION

The Covenants and Restrictions of this Declaration shall run with and bind the land subject to this declaration, and shall inure to the benefit of and be enforceable by the Declarant and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date that this Declaration is recorded. After which time said covenants shall be automatically extended for successive periods of ten

(10)years unless an instrument is signed by seventy percent (70%) of the Members entitled to cast the votes in the Association and recorded in the Deed Records of Tarrant County, Texas, which contains and sets forth an agreement to abolish or amend the Covenants and Restrictions; provided, however, no such agreement (where approved by less than ninety-five percent (95%) of the votes of the Association) to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

SECTION 18 AMENDMENTS

Notwithstanding any prior or subsequent condition, these Covenants and Restrictions may be amended and/or changed in part as follows:

- A. During the three (3) year period immediately following the date of recordation of the Covenants and Restrictions, the Declarant may amend or change these Covenants and Restrictions.
- B. From and after the third (3rd) anniversary of the recordation of this Declaration, these Covenants and Restrictions may be amended or changed upon the express written consent of at least seventy percent (70%) of the outstanding votes as determined by number of Residential Lots of the Association.

Any and all amendments shall be recorded in the office of the County Clerk of Tarrant County, Texas and shall be binding upon all lot owners including; but not limited to, the property owners who purchased lots prior to the date of the Amendments are recorded.

SECTION 19 ENFORCEMENT

Enforcement of these Covenants and Restrictions may be by any proceeding at law or in equity against any person or person violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants and Restrictions; but failure by the Association or any Owner to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City of Colleyville, Texas is specifically authorized (but not obligated) to enforce these Covenants and Restrictions. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees, related expenses and actual damages from the non-prevailing party. Additionally, the Architectural Control Committee may notify in writing the Owner of any violation of the Covenants and Restrictions. Upon receipt of notification of violation of the Covenants and Restrictions, the Owner shall have thirty (30) calendar days to correct and remove the violation of the Dedication and Restrictions. Beginning the thirty-first (31) calendar day following receipt of written notification a Restriction Violation Fee shall begin accruing at the rate of one hundred dollars (\$100.00) per calendar day until the violation of the Covenants and Restrictions is corrected or removed and the Restriction Violation Fees are paid in full.

All Restrictions Violation Fees assessed against any Owner shall result in a lien against the Lot(s) and shall also be the personal obligation of the Owner of the Lot when the violation occurs.

All Restriction Violation Fees thus paid to Declarant or the Homeowners Association shall accrue to the benefit of the Homeowners Association and shall be used for specific Common Area Improvements or applied to the general maintenance funds at the discretion of Declarant or the Homeowners Association.

SECTION 20 VALIDITY

Violation of or failure to comply with these Covenants and Restrictions shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on any Lot. In the event of invalidation of any one or more of these Covenants and Restrictions, or any portion thereof; by a judgment or court order, the remaining Covenants and Restrictions remain in full force and effect. In the event any portion of these Covenants and Restrictions conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of Colleyville, then such municipal requirement shall control.

SECTION 21 PROPOSAL OF DECLARANT

The proposals of the Declarant, as set forth in various provisions hereinabove, to develop additional parcels of property for residential purposes and/or to expand the Common Areas and Amenities (not only geographically but also in terms of the types of amenities available for use) and items of a related nature are mes provisre proposals and expressions of the existing good faith intentions and plans of the Declarant upon which any person or entity can or should rely.

SECTION 22 HEADINGS

The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context required otherwise.

SECTION 23 NOTICES TO MEMBER OR OWNER

Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Member or Owner of the records in the Association at the time of such mailing.

SECTION 24 NOTICE TO MORTGAGEES

The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/member/owner in the performance of such mortgagor's/member's/owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification.

SECTION 25 DISPUTES

Matters of disputes of disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Declarant or Board of Directors, whose determination (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners.

SECTION 26 COMMON OPEN SPACE

Common Open Space and Common Amenities shall include but not be limited to:

1. Masonry and wrought iron walls and fences constructed by Declarant or the Homeowners Association;
2. Designated Parks, Common Access Easements and Common Areas provided by Declarant Or the **Homeowners Association;**
3. Entry ways and Gates constructed by Declarant or the Homeowners Association;
4. Ponds and fountains constructed by Declarant or the Homeowners Association;
5. Sidewalks and walkways in the common areas constructed by Declarant or the Homeowners Association;
6. Landscaping and irrigation systems provided by Declarant or the Homeowners Association;
7. Wells and pumps installed by Declarant or the Homeowners Association;
8. Lights and electric service in Common Areas provided by Declarant or the Homeowners Association;
9. and all other amenities provided by Declarant or the Homeowner's Association for the obvious and apparent use, enjoyment and mutual benefit of all the Owners or lots in Caldwell's Creek.

SECTION 27 HOMEOWNERS ASSOCIATION

The Declarant shall have the authority to enforce all the Deed Restrictions and assess the Owners with reasonable and appropriate maintenance fees for the maintenance of the lots and Common Open Space. The maintenance of the Common Open Space will be overseen by the Declarant until such time when not less than seventy percent (70%) nor more than ninety percent (90%) of the homes are constructed. At such time a Homeowners Association shall be created for the benefit of the Homeowners. Membership in the Homeowners Association shall be mandatory for each Lot Owner and failure to vote at any election shall be a vote in accordance with the wishes of the simple majority of the votes cast. The Declarant shall, after giving notice in writing to all Homeowners of the time and place, conduct the organizational meeting for the Homeowners Association. Thereafter, the Homeowners Association shall be responsible for and assess reasonable and appropriate fees for the maintenance of the Common Open Space, Common amenities and the Common Entry Area. Also, the Homeowners Association shall assess the owners of lots for the mowing and maintenance of all lots not properly

maintained by the Owners thereof. The maintenance fees shall be mandatory for all Homeowners and shall, if not paid when assessed, attach to the property as a lien and shall also be a continuing personal debt of the Homeowner. Such lien shall include the reasonable cost of collection and shall accrue interest at the rate of twelve percent (12%) per annum, or such rate as established from time to time by the Homeowners Association, until paid in full.

FIRST AMENDMENT
OF THE
DEDICATION AND RESTRICTIONS
OF
CALDWELL'S CREEK ADDITION

(Filed November 29, 1995)

WHEREAS, on May 9, 1994, CALDWELL'S CREEK, LID., a Texas Limited Partnership (Declarant) caused to be filed for record the Dedication and Restrictions for the real property described on Exhibit A, attached hereto and incorporated herein by reference for all purposes. That such Dedication and Restrictions are recorded in Volume 11572, Page 1337 through 1349, Deed Records, Tarrant County, Texas; and

WHEREAS, the real property described therein, and on Exhibit A hereto, has been platted and subdivided by Declarant as shown on the Amended Final Plat of Caldwell's Creek Addition, an addition to the City of Colleyville, Tarrant County, Texas, as shown of record at Cabinet A, Slide 1496, Plat Records of Tarrant County, Texas; and

WHEREAS, Section 18 of the Dedication and Restrictions provides that Declarant may amend or change the restrictions within 3 years immediately following the date of recordation, and less than 3 years has passed following the recording of the Dedication and Restrictions.

NOW, THEREFORE, pursuant to Section 18 of the Declaration and Restrictions, Declarant now amends the restrictions as follows:

SECTION 4 GARAGES

In addition to the requirements of this Section of the Dedication and Restrictions the following is added:

One car garages, attached to the main dwelling, with a door facing the front of the lot may be constructed, if (1) it is in addition to the garages required in Section 4 of the Dedication and Restrictions and (2) is approved by the Architectural Control Committee. The design, location and screening shall be specified by the Architectural Control Committee as a condition of its approval. In no case shall such single door garage be less than thirty feet (30') from the front building line. This provision shall not be construed to change the required set back for all other front entry garages.

SECTION 5 ROOF AND EXTERIOR SURFACE

In addition to the requirements of Section 5 of the Dedication and Restrictions, the following provisions are added. Premium grade asphalt shingles may be approved by the Architectural Control Committee which meet or exceed the quality of GAF Timberline Ultra and shall match Weathered Wood color with Natural Shadow by GAF or a natural slate blend color as may be approved in writing by the Architectural Control Committee prior to installation.

The Architectural Control Committee may approve the installation of a digital satellite antenna on a lot. The application for such an antennae shall be accompanied with a site plan of the lot showing the location and dimensions of the dwelling, other structures on the lot, and the proposed location of the antennae, fences and screening, shrubs and trees. The Architectural Control committee shall have the right to require the proposed location of the antennae to be relocated on the lot to minimize adverse impact to the surrounding property owners or to be in harmony with the external designs and location of existing structures of the subdivision and otherwise in compliance with the Dedication and Restrictions as amended. The site plan shall be amended to reflect the requirements of the Architectural Control Committee as a condition of approval. The installations of the antennae shall only be as reflected on that site plan or the amendment thereof, as approved by the Architectural Control Committee. The installation of the antennae shall not exceed eighteen (18") inches in diameter, and the top of the antennae and structure shall not be higher than forty-eight (48") inches above the finished floor elevation of the dwelling if mounted on a post, or higher than the plate line if mounted on the wall of the house.

SECTION 8 FENCES, WALLS, HEDGES AND SIGNS

The provisions of this Section as set forth in the Dedication and Restrictions, is HEREBY DELETED ENTIRELY AND TOTALLY AMENDED to read as follows:

- A. No fence, wall or hedge shall be placed on any lot in the subdivision nearer to any front street than is permitted for the house on said lot and no fence, wall or hedge located between interior lot lines and building setback lines shall be higher than eight feet (8) from the ground unless it is an integral part of the house or building structure and approved by the Architectural Control Committee.
- B. All wood fences shall be constructed with the "finish" surface to the outside but shall not be constructed on the front forty feet (40') of any lot or within sixteen (16') feet of any Common Open Space. Except as otherwise provided herein, on corner lots, wood may be used as an integral part of the fence facing the side street if approved in writing by the Architectural Control Committee. However, on adjacent lots the builder of the Common Fence may select the direction of the "finish" surface but may not encroach on the adjacent lot without prior consent by the adjacent lot owner. No wire or chain link fence is permitted if exposed to view from a street, adjacent lot, or Common Open Space and shall not exceed the height of the exterior screening fence or structure. Fences within sixteen (16) feet of any Open Space shall be constructed of brick, wrought iron, or a combination thereof, after obtaining approval by the Architectural Control Committee.

As to lots 32, 33, 44, 45, 54, and 55 all in Block 1, Caldwell's Creek Addition, no wood fences shall be erected on those lots facing Caldwell Creek Drive. Any fence erected on those lots facing Caldwell Creek Drive shall be of brick, wrought iron, or combination thereof, and shall require approval by the Architectural Control Committee.

All fences shall be a minimum of four (4') feet in height. To accommodate changes in grade contours, the fence shall step up or down at the posts or columns. It is the intent of this section to require the top of each fence between posts or columns to be level horizontally.

The gates, operating equipment and controls at the entrance to Lot 1, Block 1 and at the entrance to Lot 12, Block 1 shall be installed and maintained in good working order by the respective owner of each of the individual lots. Lot 1, Block 1 and Lot 12, Block 1 are hereby so encumbered with a covenant which shall run with the land and shall be appurtenant to each lot, and each owner shall be also individually obligated to install and maintain the operating equipment and controls. This obligation may be enforced by the Homeowners Association and is effective whether expressly set forth in the conveying document to the owner or not. Any change, modification or alteration of the gates, operating equipment or controls must have the approval of the Architectural Control Committee prior to the construction thereof if, in the sole determination

of the Architectural Control Committee, the change, modification or alteration alters the exterior appearance of the gates or entryway.

The gates, operating equipment and controls at the entrance to Lots 2 through 11, Block 1, shall be installed and maintained in good working order by the owners of those lots, pro-rata. To secure the pro-rata payment of these installation, maintenance and repair costs, Lots 2 through 11 (inclusive), Block 1, are hereby encumbered with a reciprocal covenant, which shall run with the land and be appurtenant to said lots, and each owner shall be also individually obligated to the other owners to pay that owner's pro-rata portion of said costs incurred or contracted for during that owner's period of ownership. This obligation and covenant may be enforced by any owner of said lots or by the Homeowners Association, and is effective whether expressly set forth in the conveyancing document to the owner or not. Any changes, modifications or alterations of the gates, operating equipment or controls shall require an affirmative written approval of at least six (6) of the ten (10) lots, and when so approved, each respective lot owner shall be obligated to pay that owner's pro-rata portion of those costs, as required and secured hereinabove. Such changes, modifications or alterations must also have the approval of the Architectural Control Committee prior to the installation or construction thereof, if in the sole determination of the Architectural Control Committee, the changes, modifications or alterations alter the exterior appearance of the gates or entryways.

All fencing shall be approved by the Architectural Control Committee prior to construction.

- C. Should a hedge, shrub, tree, or other planting be so placed or afterward grow, so as to encroach upon adjoining property, such encroachment shall be removed upon request of the owner of the property encroached upon, or the Declarant or his successor. Should any encroachment be upon a right-of-way or easement, it shall be removed upon request of the Declarant or any authority owning easement rights. Such encroachment is wholly at the risk of the owner and removal shall be solely at his expense.
- D. No sign or signs shall be displayed to the public view on any residential lot except for (a), (b), and (c) listed below:
 - a. Any builder, during the applicable initial construction and sales period, may utilize one professional sign (of not more than twelve square feet (12) in size) per lot for advertising and sales purposes;
 - b. a dignified "for sale" sign (not to exceed six square feet (6') in size) may be utilized by one owner of the respective residential lot for the appreciable sale situation; and
 - c. development related signs owned or erected by the Declarant shall be permitted.

SECTION 19 ENFORCEMENT

The provisions of Section 19 of the Dedication and Restrictions Violation Fees shall be subordinate only to a first lien on a lot which secures the repayment of a purchase money obligation for that lot, if the purchase money first lien is recorded in the appropriate Real Property Records of Tarrant County, Texas, prior to the recording of a notice of the lien securing the Maintenance Fees or the Restrictions Violation Fees.

The provisions of this instrument are to be construed as additional Restrictions to those contained in the Dedication and Restrictions, and not in lieu thereof. In the event of any irreconcilable conflict between the provisions of this instrument and those of the Dedication and Restrictions, the provisions of this instrument shall prevail.

SECOND AMENDMENT
OF THE
DEDICATION AND RESTRICTIONS
OF
CALDWELL'S CREEK ADDITION

(Filed September 10, 1996)

WHEREAS, on May 9, 1994, CALDWELL'S CREEK LTD., a Texas Limited Partnership (Declarant) caused to be filed for record the Dedication and Restrictions for the real property described on Exhibit A, attached hereto and incorporated herein by reference for all purposes. That such Dedication and Restrictions are recorded in Volume 11572, Page 1337 through 1349, Deed Records, Tarrant County, Texas; and

WHEREAS, the real property described therein, and on Exhibit a hereto, has been platted and subdivided by Declarant as shown on the Amended Final Plat of Caldwell's Creek Addition, an addition to the City of Colleyville, Tarrant County, Texas, as shown of record at Cabinet A, Slide 1496, Plat Records of Tarrant County, Texas; and

WHEREAS, Section 18 of the Dedication and Restrictions provided that Declarant may amend or change the restrictions within 3 years immediately following the date of recordation, and less than 3 years has passed following the recording of the Dedication and Restrictions; and

WHEREAS, on November 29, 1995, Declarant filed a record the First Amendment of the Dedication and Restrictions. That such First amendment of the Dedication and Restrictions are recorded in Volume 12180, Page 0494 through 1499, Deed Records, Tarrant County, Texas; and

WHEREAS, Section 18 of the Dedication and Restrictions provides that Declarant may amend or change the restrictions within 3 years immediately following the date of recordation, and less than 3 years has passed following the recording of the Dedication and Restrictions; and

NOW, THEREFORE, pursuant to Section 18 of the Declaration and Restrictions, Declarant now enters the Second Amendment of the restrictions as follows;

SECTION 4 GARAGES

All terms and conditions of Section 4 as recorded in the Original Dedication and Restrictions and as amended in the First Amendment of the Dedication and Restrictions shall remain the same save and except the garage space shall hereby be increased from four car maximum capacity to a five car maximum capacity on all residential lots zone R-20 Residential. Those lots so effected being as follows:

Lots 1 through 12; Block 1

Lots 38 through 40; Block 1

Lots 49 through 51; Block I

Lots 57 through 59; Block 1

The provisions of this instrument are to be construed as additional Restrictions to those contained in the Dedication and Restrictions and the First Amendment of the Dedication and Restrictions, and not in lieu thereof. In the event of any irreconcilable conflict between the provisions of this instrument and those of the Dedication and Restrictions, the provisions of this instrument shall prevail.