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ELLIS COUNTY CLERK

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

FOR

**FOUR TREES ESTATES
An Addition to the City of Midlothian, Texas**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR FOUR TREES ESTATES ("Declaration") is made effective on the 19th day of July, 2017 (the "Effective Date"), by **JT EXECUTIVE PROPERTIES, LLC**, a Texas Limited Liability Company ("Declarant"), and supersedes all previously recorded restrictions, as follows:

WITNESSETH

WHEREAS, Declarant is the owner and developer of certain real property located in the Midlothian, Ellis County, Texas (the "City"), as more particularly described in Exhibit "A" (the "Property"), and has more commonly known as **FOUR TREES ESTATES**, an addition to the City of Midlothian, Ellis County, Texas (hereafter the "Subdivision"), currently consisting of One Hundred Twenty-Three (123) single family residential lots and Four (4) Common Area lots;

WHEREAS, Declarant desires to place certain restrictions, easements, covenants, conditions, stipulations and reservations contained in this Declaration upon and against the Subdivision in order to establish a uniform plan for its development and improvement, and to insure the preservation of such uniform plan for the benefit of both the present and future Owners of Lots (as defined herein) in the Subdivision.

NOW THEREFORE, Declarant hereby adopts, establishes and imposes upon the Subdivision the following reservations, easements, restrictions, assessments, liens, covenants and conditions, which shall run with the land and title or interest therein, or any part thereof, and shall inure to the benefit of each Owner in the Subdivision as a whole, whether or not set out in full or incorporated by reference in any deed or other instrument of conveyance.

ARTICLE I.

DEFINITIONS

Section 1.01. For the purposes of this Agreement, the following terms shall have the meaning set forth:

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- (a) "Assessment(s)" means a Regular Assessment and/or Special Assessment, or other amount an Owner is required to pay to the Association under this Declaration or other dedicatory instrument described herein. As noted below, the Regular Assessment shall be determined and set by the Board of Directors on an annual basis, and may be increased or decreased as necessary to provide for the purposes set forth in Section 6.01 below. Any Special Assessment may be determined and set by the Board of Directors at any time upon compliance with the procedures set forth in this Declaration and the Bylaws of the Association.
- (b) "Assessment Fund" shall mean the Association's accumulation of funds from Regular Assessments and Special Assessments, as well as income and revenue from other legitimate sources, as prescribed in this Declaration.
- (c) "Association" means Four Trees Estates Homeowners Association, Inc., a Texas nonprofit corporation, and its successors and assigns, which is designated as the representative of Owners in the Subdivision, whose membership consists of Owners, and manages and regulates the Subdivision for the benefit of the Owners.
- (d) "Architectural Control Committee" or "ACC" shall mean a committee appointed by the Board of Directors to approve or disapprove improvements to be constructed on a Lot pursuant to this Declaration and duly adopted Design Guidelines.
- (e) "Board of Directors" or "Board" refers to the governing body of the Association.
- (f) "Builder" means a person or entity (including as applicable, an Owner) who purchases or acquires a Lot or Lots for the purpose of constructing a single-family dwelling for sale or lease to a homeowner or tenant.
- (g) "Bylaws" shall mean the duly adopted bylaws of the Association as the same may be amended from time to time. The Bylaws are attached to this Declaration as Exhibit "B" and are fully incorporated herein.
- (h) "City" shall mean the City of Midlothian, a home rule municipality located in Ellis County, Texas.
- (i) "Collection Agent" means a debt collector, as defined by Section 803 of the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).

- (j) "Common Area(s)" refers to the real property in the Subdivision owned by the Association for the common use and enjoyment of the Owners, and shown as Common Area on the Plats, together with any and all buildings, structures, fences, fixtures, equipment, accessories, signage, or other improvements constructed, erected, installed, or built thereon.
- (k) "Contractor" refers to the person or entity, who is not an Owner, with whom Declarant or an Owner contracts to construct a residential dwelling and other improvements on a Lot.
- (l) "Class A Members" shall have been meaning set forth in Section 3.02(a) below.
- (m) "Class B Member" shall have been meaning set forth in Section 3.02(b) below.
- (n) "Declarant Control Period" shall mean and refer to the period of time commencing on the date of this Declaration until the later of (1) the end of the Term or any Renewal Term or (2) the ninetieth (90th) day after the date that eighty percent (80%) of the Lots in all of the Phases of the Subdivision that may be made subject to this Declaration vote to terminate this Declaration and the Association in accordance with this Declaration and/or the Bylaws. Notwithstanding anything to the contrary as set forth herein, during the Declarant Control Period, the Declarant reserves (i) the right to facilitate the development, construction, and marketing of the Subdivision; and (ii) the right to direct the size, shape, and composition of the Subdivision.
- (o) "Declaration" refers to this Declaration of Covenants, Conditions and Restrictions for Four Trees Estates, and any duly passed and recorded amendments that include restrictive covenants governing the Subdivision.
- (p) "Dedictory Instrument" means each governing instrument covering the establishment, maintenance, and operation of the Subdivision. The term includes the Declaration, Bylaws, Architectural Control Guidelines, Rules and Regulations, Open Records and Records Retention Policies, and Alternative Payment Schedule, and all lawful amendments. All dedicatory instruments shall have no effect until filed in the real property records of each county in which the Subdivision is located.
- (q) "Fencing Plan" means the fencing and screening plan submitted by the

Developer in Case No. 2016-09 and adopted by the City on or about January 12, 2016, relating to perimeter fencing and landscaping along the boundary of the Subdivision on North Walnut Grove Road.

- (r) "Final Phase Plat" shall mean, as to any particular Phase of the Subdivision, the Final Phase Plat for such respective Phase of the Subdivision, as may be approved by the City and filed of record in the OPRECT.
- (s) "Final Plat" shall refer to the Final Plat of the Subdivision recorded at Instrument No. 1612042 at Cabinet I, Slide No. 652 of the OPRECT.
- (t) "Lot" refers to any designated parcel of land in the Subdivision including any improvements. Declarant currently contemplates that the Subdivision shall consist of One Hundred Forty (140) single family residential Lots; provided, however, that, in the event that the number of actual Lots in the Subdivision or any particular Phase is increased or decreased, any term or provision of this Declaration that is dependent upon the number of particular Lots in the Subdivision or a particular Phase shall be applied, interpreted, and construed accordingly based on the actual number of Lots contained within the approved Plats of the Subdivision or such particular Phase.
- (u) "Lot Owner" or "Owner" means the record owner of a Lot or Lots within the Subdivision, whether an individual or entity. A Lot Owner includes a person or entity who purchases a Lot or Lots for the purpose of resale to a Builder or homeowner.
- (v) "Managing Agent" means the Association's designated representative as it appears on the Management Certificate.
- (w) "Management Certificate" means the instrument required to be recorded pursuant to Section 209.004 of the Property Code.
- (x) "Member" refers to every Owner or entity that holds membership in the Association by virtue of its ownership of a Lot.
- (y) "OPRECT" means the Official Public Records of Ellis County, Texas.
- (z) "PD-77" shall mean the Planned Development District created pursuant to Ordinance 2015-11, adopted by the City on April 28, 2015, amending Ordinance 2013-24, being the Zoning Ordinance of the City to provide for the rezoning of ±195.716 acres from a Planned Development District PD-15

to a Planned Development District PD-77 for all uses allowed in the Single Family-1 (SF-1) District with a minimum lot size of one acre. This term shall include any amendments to Ordinance 2015-11.

- (aa) "Phase" or "Phases" shall mean the respective phases, if any, of the Subdivision as contemplated for development by the Declarant.
- (bb) "Plats" means the Final Plat and the Replat.
- (cc) "Property Code" shall mean the Texas Property Code, as it now exists or may hereafter be amended.
- (dd) "Regular Assessment" means an assessment, charge, fee, or dues that each Owner is required to pay to the Association on a regular basis and that is designated for use by the Association for the benefit of the Subdivision, as provided herein, including, without limitation, the following costs and expenses: care, maintenance, repair, and upkeep of Common Areas; general liability and casualty insurance; directors'/officers' liability insurance; restrictive covenant enforcement; reproduction and mailing costs; website creation, development, and maintenance; employment of a management company or on-site manager; security personnel and gate maintenance; and any other cost or expenses delineated in the governing documents for the general administration and governance of the Association, or as determined by the Board.
- (ee) "Replat" means that certain Replat, dated June 7, 2017, of Four Trees Addition – Lots 14R and 24R, an addition to the City of Midlothian, Texas, consisting of 22.598 acres situated in the S. Fredrick Survey, Abstract No. 357; the E. Bryson Survey, Abstract No. 117; and the John Crane Survey, Abstract No. 246; with such Replat being recorded on June 22, 2017 at Instrument No. 1717429, and being all of Lots 14-31 of Block D of Four Trees Addition, an addition to the City of Midlothian, Texas, as recorded in Cabinet I, Slide 652 of the OPRECT.
- (ff) "Rules and Regulations" or "Rules" mean the Rules and Regulations of the Association as may be amended from time to time.
- (gg) "Special Assessment" means an assessment, charge, fee, or dues, other than a regular assessment that each Owner is required to pay to the Association for defraying in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in Common Areas, including the

necessary fixtures and personal property related to the Common Areas; or other purposes the Association as stated in its Certificate of Formation, or the Declaration of the Subdivision.

- (hh) "Subdivision" shall mean Four Trees Estates, an Addition to the City of Midlothian, Texas.
- (ii) "Tax Code" shall mean the Texas Tax Code, as it now exists or may hereafter be amended.
- (jj) "TBOC" shall mean the Texas Business Organizations Code, as it now exists or as it may be hereafter amended, modified, or repealed in whole or in part.
- (kk) "Texas Residential Property Owners Protection Act" or the "Act" shall refer to Chapter 209 of the Texas Property Code, as it now exists or as it may be hereafter amended, modified, or repealed in whole or in part. Sections of the Act are referenced as "TPC §_____".
- (ll) "Transfer Fee" means dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment under this Declaration, other dedicatory instrument, or under law, including a fee or charge payable for a change of ownership entered in the records of the Association.

ARTICLE II.

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01. Plats. The Plats subjects the Subdivision to the limitations as set forth therein, and the roads, streets, and easements as shown thereon. The Plats further establishes certain restrictions applicable to the Subdivision. All dedications, restrictions and reservations created in this Declaration or shown on the Plats, re-plats, or amendments of the Subdivision recorded or hereafter recorded shall be construed as being included in each Lot, deed or conveyance executed or to be executed, whether specifically referred to therein or not.

Section 2.02. Utility Easements. The Declarant has reserved for public use the utility easements hereafter referred to as "general easements" shown on the Plats or that have been or hereafter may be created by separate instrument recorded in the OPRECT, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, storm surface drainage, cable television, or any other utility installed in, across and/or under the Subdivision. All

utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Common Area and/or Lots. Should any utility provider furnishing a service covered by the general easement herein provided for request a specific easement by some recordable document, the Association, without the joinder of any other Owner, shall have the right to grant such easement on the Subdivision without conflicting with the terms hereof. Any utility provider serving the Subdivision shall have the right to enter upon any utility easement for the purpose or installation, repair and maintenance of their respective facilities. Neither the Association nor any utility provider, political subdivision or other authorized entity using easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns of the Owner on the Subdivision covered by these easements.

Section 2.03. Title Subject to Easements. It is expressly agreed and understood that the title conveyed to any of the Lots by deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, electric lighting, electric power, or telephone purposes, and other easements hereafter granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service to other Lots, but each Owner shall have an easement over and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot. The Association may convey title to said easements to the public or a utility provider.

Section 2.04. Association's Easements. The Association hereby reserves an easement that allows access to an Owner's Lot to remedy a violation of this Declaration or other Association dedicatory instruments; however, the Association may not amend this Declaration or other dedicatory instrument to grant itself additional easements through or over an Owner's Lot without the consent of the Owner.

ARTICLE III.

THE ASSOCIATION

Section 3.01. Nonprofit Corporation. The Association is a nonprofit corporation, has been organized and is governed by Chapter 22 of the TBOC, the Certificate of Formation, and Bylaws of the Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation. The term of the Association shall be perpetual. Notwithstanding anything to the contrary contained herein or in the Bylaws, (a) the Association shall not have the right to dissolve or terminate, and (b) the Declarant and the Association shall not have the right to amend, alter, change, or revise any portion of this Declaration or the Bylaws pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements,

systems, area or grounds, including but not limited to the Fencing Plan, that are the responsibility of the Declarant or the Association, without the prior written consent of the City.

Section 3.02. Bylaws. The Association has adopted Bylaws to govern the organization or operation of the Subdivision and the use and enjoyment of the Lots and Common Area; provided that the same are not in conflict with the terms and provisions in this Declaration. The Association might adopt such amendments, modifications, or revisions to the Bylaws as it deems necessary for the governance, operation, and management of the Association and the Subdivision.

Section 3.03. Membership. Every person or entity that is a record owner of any Lot that is subject to an Assessment as provided herein, shall be a Member of the Association. Any and each successive purchaser of a Lot from an Owner shall automatically and mandatorily become a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, after the expiration of the Declarant Control Period, the Directors of the Association must be Members of the Association. Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association. Membership is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's designated representative.

Section 3.04. Classes of Membership. The Association shall have two (2) classes of membership as follows:

- (a) Class "A" Members. Class "A" Members shall be all Lot Owners with the exception of the Class "B" Member.
- (b) Class "B" Members. The Class "B" Member shall be Declarant and any successor or assignee of Declarant who takes title for the purposes of development and sale of Lots in the Subdivision; provided, however, that a Builder shall not be classified as a successor to the Declarant for the purposes of being a Class "B" Member.

Upon the expiration or termination of the Declarant Control Period, the Class "B" Member's interest shall terminate and be converted to a Class "A" Member. During the Declarant Control Period, the Class "B" Member is entitled to appoint and remove the members of the Board of Directors and the officers of the Association, other than Board members or officers elected by Members of the Association pursuant to the Bylaws.

Section 3.05. Voting. Class "A" Members shall be entitled to one (1) vote for each Lot of which they are record Owner. The Class "B" Member shall be entitled to ten (10) votes per Lot owned. In the event that the Subdivision is constructed or developed in phases, until such time as the construction plans are approved for each Phase of the Subdivision, the number of votes attributable to the Declarant shall be calculated based on the number of Lots for each respective Phase as determined by the Declarant. Upon the approval of the construction plans for each respective Phase, the number of votes to which the Declarant is entitled shall be calculated based on the actual number of Lots contained within such Phase. Unless otherwise specified herein, voting by owners shall be in accordance with Sections 209.0059, 209.00592, and 209.00594 of the Property Code.

Section 3.06. Ballots.

- (a) Except as provided by Subsection 3.06(d) below, a vote cast by a member of a property owners' association must be in writing and signed by the member if the vote is cast:
 - (1) outside of a meeting;
 - (2) in an election to fill a position on the Board of Directors;
 - (3) on a proposed adoption or amendment of this Declaration;
 - (4) on a proposed increase in the amount of a Regular Assessment, or the proposed adoption of a Special Assessment; or
 - (5) on the proposed removal of a member of the Board of Directors.
- (b) If the Association elects to use a ballot for a vote on a matter other than a matter described by Subsection (a) above, the ballot must be
 - (1) in writing and signed by the Owner; or
 - (2) cast by secret ballot in accordance with Subsection (d) below.

Electronic votes cast under Property Code §209.00592 constitute written

and signed ballots.

- (c) In an Association election, written and signed ballots are not required for uncontested races.
- (d) The Association may adopt rules to allow voting by secret ballot by association members. The Association must take measures to reasonably ensure that:
 - (1) an Owner cannot cast more votes than the Owner is eligible to cast in an election or vote;
 - (2) the Association counts each vote cast by an Owner that the Owner is eligible to cast; and
 - (3) in any election for the Board of Directors, each candidate may name one person to observe the counting of the ballots, provided that this does not entitle any observer to see the name of the person who cast any ballot, and that any disruptive observer may be removed.
- (e) In addition to the provisions set forth in this Section 3.06 and the Bylaws, the tabulation of, and access to, ballots shall be performed in accordance with, and governed by, §209.00594 of the Property Code.

Section 3.07. Appointment of Board of Directors. During the Declarant Control Period, the Class "B" Member shall be entitled to appoint and remove, in its sole and absolute discretion, the members of the Board of Directors and the officers of the Association. Notwithstanding the foregoing, at least one-third (1/3) of the members of the Board shall be elected by the Owners other than the Declarant not later than the tenth (10th) anniversary after this Declaration was recorded in the OPRECT.

Section 3.08. Owner's Right of Enjoyment. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) This Declaration, as it may be amended from time to time;
- (b) Any restrictions or limitations contained in any deed conveying additional Common Area to the Association;
- (c) The right of the Board to limit the number of guests who may use the

Common Area, and to adopt other Rules and Regulations regulating the use and enjoyment of the Common Area;

- (d) The right of the Board to suspend the right of an Owner to use any recreational facilities within the Common Area for any period during which any Assessment or portion thereof owed by such Owner remains delinquent, and for a period not to exceed sixty (60) days for a single violation, or for a longer period in the case of any continuing violation, of the Declaration, Bylaws, or Rules and Regulations of the Association;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to the approval of sixty-seven percent (67%) of the votes of all Members eligible to vote;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other fees (which fees shall be separate from Assessments) for the use of any recreational facility situated upon the Common Area;
- (g) The right of the Board to permit non-Member use of any recreational facility situated on the Common Area upon payment of user fees established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage any and all of its real or personal property as security for money borrowed or debts incurred, subject to the approval of sixty-seven percent (67%) of the votes of all Members eligible to vote;
- (i) All easement rights necessary or desirable for the Association to perform its duties and enforce this Declaration;
- (j) The right of the Association, acting through the Board, to grant easements pursuant to this Declaration; and
- (k) The right of the Association, acting through the Board, to enter into and execute contracts with any party for the purpose of providing maintenance or other materials or services consistent with the purposes of the Association and this Declaration.

Section 3.09. Delegation of Rights. Any Owner may delegate his or her right of enjoyment of the Common Area to the members of his or her family, tenants, customers, clients, employees, agents, contractors, business, and social and business invitees subject

to reasonable regulation by the Board and in accordance with procedures the Board may adopt. Every Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to any portion his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

Section 3.10. Declarant's Rights in Common Area. Declarant may retain the legal title to easements or fee simple parcels designated as Common Area. Declarant may, at any time after the date hereof, convey legal title to all or a portion of such Common Area to the Association. The Association shall be obligated to accept title to, operate and maintain the Common Area conveyed to the Association as elsewhere provided in this Declaration; provided, however, such Common Area shall be conveyed to the Association by Declarant free and clear of all encumbrances, except such encumbrances as may be set forth herein or on any recorded plat of the Subdivision.

Section 3.11. Prohibition on Amendments. In accordance with TPC §209.013, this Declaration may not be amended by the Association during the period between the time the Declarant loses the majority of the voting rights or other form of control of the Association and the time a new Board of Directors of the Association assumes office following the loss by the Declarant of the majority of the voting rights or other form of control.

ARTICLE IV.

USE AND CONSTRUCTION RESTRICTIONS

Section 4.01. Use. Each Lot in the Subdivision shall be used only for residential related purposes as set forth below. The Association, acting through the Board of Directors and Architectural Control Committee shall have the right and power to enforce the restrictions contained in this Declaration and all other dedicatory instruments.

Section 4.02. Single Family Residential Construction. Except as provided below, no building shall be erected, altered, placed or permitted to remain on any Lot other than one dwelling unit per each Lot to be used for single family residential purposes. All dwellings must conform to the Architectural Control Guidelines and approved by the ACC prior to construction. Any improvement commenced on any Lot shall be completed as to exterior finish and appearance within six (6) months from the construction commencement date. All garages will be of the same general construction as the main dwelling, and located on the Lot according to the building site plan approved by the Architectural Control Committee.

Section 4.03. Composite Building Site. Any Owner of one or more adjoining Lots (or portions thereof) may, with the prior written approval of the Architectural Control

Committee, and with approval of the City, if required, consolidate such Lots, with the privilege of placing or constructing improvements on such resulting site, in which case the side set-back lines shall be measured from the resulting side Subdivision lines rather than the Lot lines as indicated on the Plats.

Section 4.04. Use of Temporary Structures. No structure of a temporary or permanent character, whether trailer, motor home, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently.

Section 4.05. Fencing. Any and all fencing, walls, or other similar structures shall be designed, constructed and maintained in accordance with the following requirements and guidelines:

- (a) General. All walls and fences must be approved prior to construction by the Architectural Control Committee.
- (b) Perimeter Fencing/Landscaping – North Walnut Grove Road. The perimeter fencing for the Subdivision fronting on North Walnut Grove Road shall be designed, built, constructed and maintained in accordance with the following requirements and guidelines:
 - (1) The twenty-five (25) foot wide landscaped buffer that adjoins the platted area of the Subdivision, being situated along the eastern line of North Walnut Grove Road, from the north line of W. Shiloh Road northward to the northern boundary of the development shall be dedicated as a Common Area lot on the Plats.
 - (2) The bermed and landscaped portion of the vegetative screen wall, situated along the eastern line of North Walnut Grove Road, shall be fully constructed up to the most northern lot line of Lot 4 of Block G as shown in the Attachment 4 of the Fencing Plan with all landscaping and irrigation concurrently with the construction of the public improvements for the Subdivision and completed before the City Engineer accepts the Subdivision as completed.
 - (3) In conjunction with the initial construction of improvements for North Walnut Grove Road, only the three (3) foot high berm element of the vegetative screen wall shall be extended to the northern boundary of the development in a rough graded condition and be stabilized with either a seeded, mulched or sodded grass ground cover. Such bermed portion may be manually irrigated by the Developer and/or Association or its assigns, until such a time that North Walnut Grove Road is extended as described in subparagraph 4 below.

- (4) The Developer and/or Association or its assigns, shall be responsible for the extension and installation of all irrigation, groundcover, grasses, shrubs, trees and similar landscaped improvements for the northern segment of the landscaped buffer lot, located between Lot 4 of Block G (as shown in Attachment 4 of the Fencing Plan) and the northern boundary of the Subdivision, within sixty (60) days after the extended paving and utilities for North Walnut Grove Road is completed by the City for same segment location.
 - (5) The Association or its assigns, shall be responsible for the irrigation and maintenance of all groundcover, grasses, shrubs, trees and similar landscaped improvements constructed inside the total length of the dedicated landscape buffer lot. All dead and damaged landscaped areas and materials shall be repaired or replaced within thirty (30) days of written notice of such condition as issued by City inspectors.
- (c) Lot Fencing. Each individual Lot located along the north side of West Shiloh Road be fenced with a 7-foot high cedar fence, with a built-up cap trim (as shown in Attachment 5 of the Fencing Plan), that will span between 24-inch squared masonry columns placed on every other lot corner. Such masonry columns shall be supported by a minimum 2' x 2' x 18" foundation footing supported by a minimum ten (10) inch diameter pier extending a minimum of five (5) feet below finished grade. Any other fencing on any Lot shall not be closer to front street Subdivision lines than the Lot boundary line and no closer than the Lot boundary line or side street lines, as shown on the Plats. Wire, and chain link fencing shall not be permitted. All other fencing must be constructed of wood, masonry, wrought iron, or a combination thereof and approved by the Architectural Control Committee.

Section 4.06. Prohibition of Offensive Activities. No activity, whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes, unless said activity meets the following criteria: (a) no additional exterior sign of activity is present, (b) it is the type of action that usually happens in a home, (c) no additional traffic, that would not be there normally is created, and (d) nothing dangerous is present. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

Section 4.07. Garbage and Trash Disposal. Garbage and trash or other refuse shall not be permitted to be dumped at any place upon the Subdivision or adjoining land. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 4.08. Roof Shingles. Subject to this section, and approval by the ACC, Owners may install shingles that are designed to be wind and hail resistant, provide heating and cooling efficiencies greater and are more durable than those provided by customary composition shingles, and/or provide solar generation capabilities; however, when installed, they must resemble the shingles used or otherwise authorized for use on improvements on Lots in the Subdivision, and match the aesthetics of the Subdivision.

Section 4.09. Flags and Flagpoles. Subject to this section, and approval by the ACC, Owners may display a flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States armed forces. The flag of the United States shall only be displayed in accordance with 4 U.S.C. Sections 5-10, which qualify the times and occasions for the flag's display, the position of the flag, and respect for it. The flag of the State of Texas shall only be displayed in accordance with Chapter 31 of the Texas Government Code. A flagpole attached to a dwelling or a freestanding pole is to be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling on the Lot. The display of the flag, and its location and construction of the supporting flagpole shall comply with appropriate ordinances, easements and setbacks of record, and a displayed flag and flagpole on which it is flown shall be maintained in good condition. Any deteriorated flag or structurally unsafe flagpole shall be repaired, replaced or removed. A flagpole attached to the dwelling on a Lot may not exceed six (6) feet in height. A freestanding flagpole shall not exceed twenty (20) feet in height, measured from the ground base to the top of the flagpole. Illumination of permitted flags must be sub-surface and not exceed 200 watts, and positioned in a manner not directed toward and adjacent Lot. A flag displayed on a freestanding flagpole shall not be more than ten (10) feet in height, and a flag displayed on a flagpole attached to a dwelling shall be no more than three (3) by five (5) feet. No more than one of each permitted flags may be displayed on a flagpole at any time. Owners may not install flagpoles or display flags in the Common Area without the express written consent of the Association.

Section 4.10. Installation and Display of Exterior Signs or Objects. No sign, display, or decorative object, including any holiday or religious decorations or objects, shall be installed, erected, or displayed on any structure or Lots except in accordance with the following:

- (a) **Signs.** Owners may display on the Owner's Lot one or more signs advertising a political candidate or ballot item for an election on or after the ninetieth (90th) day before the date of the election to which the sign relates or ten (10) days after that election date. Signs shall be ground-mounted and display only one sign for each candidate or ballot item. Any sign that contains roofing material, siding, paving materials, flora, one or more

balloons or lights, or any other similar building, landscaping, or nonstandard decorative components, is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object, includes the painting of architectural surfaces, threatens the public health or safety, is larger than four (4) feet by six (6) feet, violates a law, contains language, graphics, or any display that would be offensive to the ordinary person, or is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists is prohibited.

- (b) Exterior Decorative Objects. If any Owner desires to install, erect, or display any oversized exterior decorative objects, whether natural or man-made, an application for approval must be submitted to and reviewed by the ACC prior to the installation or erection of any such oversized exterior decorative objects, including holiday decorations.
- (c) Oversized decorative objects are defined as any object exceeding twenty-four (24) inches in height and twenty-four (24) inches in either width or depth and includes, but is not limited to, oversized decorative objects such items as sculptures, fountains, driftwood, and free standing poles of any type. Oversized decorative objects will be considered based on their size, color, scale, location, compatibility with architectural and environmental design qualities and their visual impact of adjoining lots. The ACC shall act upon any application under this Section within fifteen (15) days from the date of submission of such application.
- (d) Religious Item Displays. Owners may display or affix on the entry to the Owner's dwelling one or more religious items, the display of which is motivated by the Owner's or resident's sincere religious belief.
- (e) Restrictions; Board Guidelines. Notwithstanding the foregoing, the display or affixation of a sign, exterior decorative object, or religious item on an Owner's Lot or dwelling that threatens public health or safety, violates a law, or contains language, graphics, or any display that is patently offensive to a passerby is prohibited. The board of the Association may adopt reasonable guidelines and restrictions for the display of signs, exterior decorative objects, or religious items on an Owners Lot or dwelling, including, without limitation, guidelines and restrictions relating to size, materials, time period for display, and location or proximity to streets, easements, public facilities, or other Lots. This Section does not authorize an Owner to use a material or color for an entry door or door frame, or make an alteration to the door or door frame of the Owner's dwelling that is not

authorized by the ACC and Design Guidelines. The Association may, upon reasonable notice to the Owner as set forth in subsection (f) below, remove an item displayed in violation of this Section.

- (f) Subject to the restriction of subsections (a) – (d) above, holiday decorations are generally exempt from this requirement, but shall not be displayed more than forty-five (45) days before or fifteen (15) days after the holiday has occurred.
- (g) In the event of a violation of this Section, the Association shall give the Owner written notice thereof. If the Owner fails to remove such sign or object or otherwise correct such violation within ten (10) days from the receipt of such notice, the Association shall have the right to remove, at the Owner's cost and expense, any such sign, exterior decorative object, or item displayed in violation of this Section.

Section 4.11. Solar Energy Devices. Subject to this Section, and approval by the ACC within forty-five (45) days of submission of a plan, Owners may install solar energy devices on the roof of the dwelling or other permitted improvement on a Lot, or in a fenced yard or patio not taller than the fence line. As used in Section 202.010 of the Property Code, "solar energy device" has the meaning assigned by Section 171.107 of the Tax Code, which defines the term as "a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar generated power". The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. A solar energy device is not permitted anywhere on a Lot except on the roof of the residential dwelling or other permitted structure on the Lot or in a fenced yard or patio within the Lot. A solar energy device may not extend higher than the dwelling's or other permitted improvement's roofline, and shall conform to the slope of the roofline, shall have a frame, support bracket, or visible piping that is a silver, bronze, or black tone commonly available in the marketplace, and shall be located on a roof as designated by the ACC, unless an alternate location increases the estimated annual energy production of the device by more than ten percent (10%) above the energy production of the device if located in the area designated by the ACC. For determining estimated annual energy production, the parties shall use a publicly available modeling tool provided by the National Renewable Energy Laboratory. A solar energy device located in a fenced yard or patio shall not be taller than or extend above the fence enclosing the yard or patio. A solar energy device shall not be installed on a Lot in a manner that voids material warranties. A solar energy device that, as adjudicated by a court threatens the public health or safety, violates a law, or is located in the Common Area is prohibited. The ACC may not withhold approval if the guidelines of this section are met or exceeded, unless the ACC determines in writing that placement of the device

as proposed constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The written approval of the proposed placement of the device by all Owners of property adjoining the Lot in question constitutes *prima facie* evidence that substantial interference does not exist. During the Declarant Control Period, Declarant may prohibit or restrict an Owner from installing a solar energy device.

Section 4.12. Rain Barrels and Rain Harvesting Systems. The use and/or installation of rain barrels or a rain harvesting system on the Owner's Lot shall be governed by Section 202.007 of the Property Code, subject to the following circumstances or restrictions:

- (a) No rain barrel or rainwater harvesting system shall be permitted in the Common Area or located on a Lot between the front of the dwelling and an adjoining or adjacent street, be of a color inconsistent with the color scheme of the Owner's dwelling, display any language or other content that is not typically displayed by a barrel or system as it is manufactured.
- (b) The Design Guidelines shall regulate the size, type and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a dwelling or any other location that is visible from a street, another Lot, or the Common Area, provided, however, that no such regulation or restriction shall prohibit the economic installation of the device or appurtenance on the Owner's Lot.
- (c) An Owner shall provide reasonably sufficient area on a Lot to install any rain barrel, rainwater harvesting device, or other appurtenance.

Section 4.13. Laws and Ordinances. Owners, their lessees, guests, and invitees, shall comply with all laws, ordinances, and statutes applicable to their Lot and the Subdivision, and any violation may be considered a violation of this Declaration or other dedicatory instrument.

ARTICLE V.

ARCHITECTURAL CONTROL

Section 5.01. Basic Control. No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced or changes made in the design or exterior appearance thereof (excluding, without limitation, painting staining or siding) or any addition or exterior alteration made thereto after original

construction or demolition or destruction by voluntary action made thereto after original constructed, on any Lot in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Architectural Control Committee of the construction plans and specification for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument. Each application made to the ACC shall be accompanied by two sets of plans and specifications for all proposed construction (initial or alteration) to be done on such Lot, including plot plans showing location on the Lot.

Section 5.02. Architectural Control Committee. The authority to grant or withhold architectural control approval as referred to above is in the Architectural Control Committee composed of three (3) Members of the Association, who shall, during the Declarant Control Period, be appointed by Declarant. The ACC shall have exclusive jurisdiction over all original construction on the Lots and over modifications, additions, or alterations made on or to the improvements on the Lots. After the Declarant Control Period, the members of the ACC shall be appointed annually by the Board. Subject to the approval of the Declarant or the Board, as applicable, the ACC may establish and charge reasonable application and review fees, and costs reimbursement guidelines, for its review of plans.

Section 5.03. Design Guidelines. The ACC shall adopt such standards or guidelines ("Design Guidelines") as it determines for the construction or alteration of improvements on the Lots and for landscaping, and establish application and review procedures for submitted plans. The ACC shall make the Design Guidelines available to Owners, Builders, and Contractors who seek to engage in construction upon a Lot and who shall conduct their operations strictly in accordance therewith.

Section 5.04. Consulting Professionals. The ACC is authorized, but not obligated, to retain the services of consulting professionals such as building architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ACC in performing its functions set forth herein. The costs of the services of such consultants shall be an Owner expense if required for services regarding plans submitted for the Owner's Lot, except to the extent such costs are covered by a plan review fee established by the ACC, if it elects to establish such a fee.

Section 5.05. Effect of Approval. The granting of the approval shall constitute only an expression of opinion by the ACC that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and, such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed

in accordance with such plans and specifications and plot plan but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reasons of the good faith exercise thereof.

Section 5.06. Appointment of ACC; Authority of Association; Declarant as Member. During the Declarant Control Period, Declarant may appoint all members of the ACC and is entitled to remove and replace any of same, and in all other respects to exercise all rights and authority of the Association as set forth in this Declaration and other dedicatory instruments. Without limitation of the foregoing, the provisions of this Declaration or any other dedicatory instruments regarding qualifications for members of the ACC are hereby specifically declared inapplicable to Declarant during the Declarant Control Periods.

Section 5.07. ACC Approval not Required; Declarant's ACC Authority as to Initial Development of Lots. Declarant and any Contractor as so designated by Declarant are not required to obtain ACC approval or otherwise comply with any provisions of this Article until completion of the initial sale of each Lot, and Declarant hereby reserves and retains full and exclusive authority of the ACC as to each Lot, until completion of the initial sale. The foregoing applies notwithstanding any other provisions of this Declaration or any other dedicatory instruments until completion of the initial sale of all Lots within the Subdivision. As to each Lot, "completion of the initial sale" occurs upon substantial completion of the construction of a single-family residence and related improvements upon the Lot and the sale of the Lot to a person other than Declarant or a builder for use and occupancy of the Lot for a single-family dwelling.

ARTICLE VI.

ASSESSMENTS

Section 6.01. Assessment Obligation. Each Owner, by acceptance of a deed to a Lot, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association the annual Regular Assessment, and any Special Assessments hereby levied. The Assessments levied by the Association shall be used exclusively to (a) promote the health, safety and welfare of the Owners in the Subdivision, (b) provide for the continuing improvement and maintenance of the screening walls, entrances, signage, all landscaping and irrigation systems, ponds or other water features, parks, open or green spaces, and other structures, amenities or features of the Subdivision, and (c) pay or provide for the payment of the management, administration, operation, and governance of the Association.

Section 6.02. Regular Assessment. The Regular Assessment shall be used to

create the Assessment Fund, which shall be used as herein provided; and each such Regular Assessment (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot to the Association. The Regular Assessment for the year of purchase shall be prorated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year. Any Regular Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Regular Assessment by the non-use of any Common Areas or by the abandonment of his or her Lot. The initial amount of the Regular Assessment applicable to each Lot will be \$_____ per year due in advance, payable on January 1st of each year. All other matters relating to the Regular Assessment and the collection, expenditures and administration of the Assessment Fund shall be determined by the Declarant or the Board of Directors of the Association, subject to the provisions hereof. The Association shall have the right at any time, to adjust the Regular Assessment from year to year as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

Section 6.03. Special Assessment. In addition to the Regular Assessment, the Association may upon the affirmative vote of two-thirds (2/3) of the Members of the Association at a meeting duly called for such purpose levy a Special Assessment in any year for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including fixtures and personal property. Notwithstanding the foregoing, if an emergency exists such that the Board of Directors determines that the repair of a capital improvement upon the Common Area is necessary to eliminate or reduce the risk of injury to third parties and there is not enough money held by the Association, in reserve or otherwise, to repair the capital improvement to reduce or eliminate this risk, the Board of Directors may levy a Special Assessment in an amount sufficient to repair the capital improvement to reduce or eliminate such risk without the affirmative vote of two-thirds (2/3) of the Members of the Association.

Section 6.04. Uniform Rate of Assessment. All Assessments must be fixed at a uniform rate for all lots and may, at the discretion of the Declarant or the Board of Directors, be collected on a monthly basis. In the event the Association fails to perform its specified responsibilities herein set forth or if declared nonexistent for any reason, the Declarant or its assigns shall have the right to levy the Assessments against each Lot Owner of the Association on a pro-rata basis for the cost of maintenance or the cost of correcting any condition for which the Association was responsible. The Declarant or its assigns, further, under the Association's default herein, shall have the same rights of the

Association to levy such Assessments, and create liens on the property for unpaid Assessments as provided herein.

Section 6.05. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget that shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and general assessment. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Section 6.06. Commencement Date of Annual Assessments. The Association shall levy the first annual Regular Assessment provided for herein, based on the operating budget for the remainder of the initial calendar year, on the first day of the month following the initial conveyance of the Common Area to the Association. Thereafter, the Regular Assessments shall continue from calendar year to calendar year.

Section 6.07. Common Area Exempt. All Common Areas and all portions of the Subdivision owned or otherwise dedicated to any political subdivision, shall be exempt from the assessments and liens created herein.

Section 6.08. Transfer and Other Fees. A transfer fee of may be charged by the Association or its Managing Agent to reflect changes of ownership, tenancy or occupancy on the records of the Association. The right and authority to set the amount of, and receive payment of charges for, statements of Regular Assessments, Special Assessments or other indebtedness, resale certificates, and similar responses and transfer fees as aforesaid is deemed to be assigned by virtue of contracting with a Managing Agent to provide the associated functions and services for so long as the applicable contract remains in effect, unless the applicable contract expressly provides otherwise.

ARTICLE VII.

COLLECTION OF ASSESSMENTS; ASSESSMENT LIEN

Section 7.01. Creation of Lien and Personal Obligation. Upon the filing and recording of this Declaration, a lien is hereby created and granted to the Association in order to secure the payment of the any Regular Assessment or Special Assessment, and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual

lien on such Lot, which may be foreclosed judicially or by Expedited Foreclosure Proceedings, pursuant to the provisions of Section 209.0092 of the Property Code and Texas Rules of Civil Procedure Rules 735 and 736 (and any successor statutes and/or Rules); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. Expedited Foreclosure Proceedings are not required under this Section if the Owner of the Lot to be foreclosed agrees in writing to waive said Expedited Foreclosure Proceedings at the time the foreclosure is sought. A waiver under this Section may not be required as a condition of the transfer of title to a Lot.

Section 7.02. Prerequisites to Foreclosure. Prior to referring an Owner's account to a collection agent, the Association shall provide written notice, by certified mail, return receipt requested, that specifies each delinquent amount and the total amount of the payment required to make the account current, describes the options the Owner has to avoid the referral including payment plan options, and provides at least 30 days to cure the delinquency before further action is taken.

Section 7.03. Collection Fees. Owners are not liable for costs that are dependent or contingent on amounts recovered, or under an agreement that does not require the Association to pay all fees for the action taken by the collection agent.

Section 7.04. Contact. An agreement between the Association and a collection agent may not prohibit an Owner from contacting the Association's Board of Directors or Managing Agent regarding their delinquency.

Section 7.05. Non-Transferability of Lien. The Association shall not sell or transfer its interest in accounts receivable except for the purpose of collateral for a loan.

Section 7.06. Alternative Payment Schedule. Pursuant to Section 209.062 of the Property Code, the Association hereby adopts reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments for delinquent regular or special assessments or any other amount owed without incurring additional penalties. The Association hereby adopts the following guidelines with regard to alternative payment schedules for delinquent assessments and other amounts owed by an Owner:

- (a) **Term.** The minimum term for a payment agreement shall be (3) three months and the maximum shall be (18) eighteen months from the date of the Owner's request for a payment plan. Subject to such minimum and maximum terms, the Association shall determine the appropriate term of the payment plan in its sole discretion.
- (b) **Form.** Any and all alternative payment agreements shall be in writing and

signed by the Owner and a duly authorized member of the Board of the Association.

- (c) Additional Monetary Expense. So long as an Owner is not in default under the terms of the payment agreement, the Owner shall not incur additional monetary expenses; however, the Owner shall be responsible for all interest accruing during the term of the payment plan as well as reasonable costs associated with administering the payment plan or interest.
- (d) Application of Payments. If at the time the Association receives a payment, the Owner is not in default under an alternative payment agreement, the Association shall apply the payment to the owner's debt in the following order of priority: (i) any delinquent assessment; (ii) any current assessment; (iii) any attorney's fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure; (iv) any attorney's fees incurred by the Association that are not subject to subsection (c); (v) any fines assessed by the Association; and (vi) any other amounts owed to the Association.
- (e) Default. If the Owner defaults under a payment plan agreement, the account may immediately be turned over to the Association's attorney for collection. The Association shall not be required to enter into an alternative payment agreement with an Owner who failed to honor the terms of a previous payment agreement during the two (2) years following the Owner's default under the previous alternative payment agreement. At the discretion of the Association, an Owner who failed to honor the terms of a previous payment agreement may be required to waive Expedited Foreclosure Proceedings under Section 209.0092 of the Act as a condition to an additional alternative payment agreement. If, at any time the Association receives a payment from an Owner who is in default of an alternative payment agreement, the Association is not required to apply the payment in the order of priority specified by Paragraph 4, Sections (a) through (f) above.

The Association may reduce or waive some or all of the charges addressed by this policy on an *ad hoc* basis without waiving the right to charge such fees on future requests.

Section 7.07. Notice and Opportunity to Cure for Certain Other Lienholders.

The Association may not foreclose its assessment lien by Expedited Foreclosure Proceedings or judicially unless it has: provided written notice by certified mail, return receipt requested, of the total amount of the delinquency to any other holder of a lien that is inferior or subordinate to the Association's lien and is evidenced by a deed of trust; and

provided the recipient of the notice an opportunity to cure within sixty-one (61) days from the receipt of the notice.

Section 7.08. Foreclosure Sale Prohibited in Certain Circumstances. The Association may not foreclose its assessment lien for debts consisting solely of fines or attorneys' fees associated with the fines assessed, or for copy charges under its Open Records Policy, pursuant to § 209.005 of the Act.

Section 7.09. Assessment Lien Filing. In addition to the right of the Association to enforce an Assessment or other charge levied hereunder, the Association may file a claim of lien against the Lot of the delinquent Owner by recording a Notice of Lien setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Lot against which the lien is claimed and (e) the name of the Owner. The Notice of Lien shall be recorded in the OPRECT, and is a legal instrument affecting title to a Lot, and shall be prepared by the Association's attorney. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice of satisfaction of the delinquent assessment upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such instrument.

Section 7.10. Attorney's Fees. All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its Managing Agent. Only Board members or the Association's Managing Agent or employees of its Managing Agent may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs.

Section 7.11. Notice After Foreclosure Sale. After the Association conducts a foreclosure sale of an Owner's Lot, the Association must send to the Owner and to each lienholder of record, not later than the thirtieth (30th) day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the Lot Owner and each lienholder of record of the right of the Lot owner and lienholder to redeem the property. The notice must be sent by certified mail, return receipt requested, to the Lot Owner's last known mailing address, as reflected in the records of the Association, the address of each holder of a lien on the Lot subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located, and the address of each transferee or assignee of a deed of trust who has provided notice to the Association of such assignment or transfer. Notice provided by a transferee or assignee to the Association shall be in writing,

shall contain the mailing address of the transferee or assignee, and shall be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the Association according to the mailing address of the Association pursuant to the most recent Management Certificate filed of record. If a recorded instrument does not include an address for the lienholder, the Association does not have a duty to notify the lienholder as provided by this section. For purposes of this section, the Lot Owner is deemed to have given approval for the Association to notify the lienholder. Not later than the thirtieth (30th) day after the date the Association sends the notice, the Association must record an affidavit in the Real Property Records, stating the date on which the notice was sent and containing a legal description of the Lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit. The notice requirements of this section also apply to the sale of an Owner's Lot by a sheriff or constable conducted as provided by a judgment obtained by the Association.

Section 7.12. Right of Redemption After Foreclosure. The Owner of a Lot in the Subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing the Association's assessment lien not later than the one hundred eightieth (180th) day after the date the Association mails written notice of the sale to the Owner and the lienholder under Sections 209.010 and 209.011 of the Property Code. A lienholder of record may not redeem the Lot as provided herein before ninety (90) days after the date the Association mails written notice of the sale to the Lot Owner and the lienholder under the Property Code, and only if the Lot Owner has not previously redeemed. A person who purchases a Lot at a sale foreclosing the Association's assessment lien may not transfer ownership of the Lot to a person other than a redeeming Lot Owner during the redemption period.

Section 7.13. Removal of Foreclosure Authority. The right to foreclose the lien on real property for unpaid amounts due to the Association may be removed by a vote of at least sixty-seven percent (67%) of the total votes allocated in the Association. Owners holding at least ten percent (10%) of all voting interests may petition the Association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section. This section is required pursuant to §209.0093 of the Property Code, and should this provision be amended or repealed in any form, this section shall be deemed to be automatically amended or repealed in accordance therewith.

Section 7.14. Right of Declarant to Set Rate. During the Declarant Control Period, Declarant is entitled to change the annual rate of a Regular or Special Assessment as set forth in this section without the joinder, vote, or consent of any Owner and without further formality than giving notice. Without limitation to the foregoing, the provisions regarding disapproval of an annual rate of Regular or Special Assessments is specifically declared inapplicable when the rate is set by Declarant under this Section.

Section 7.15. Payment of Assessments by Declarant during Declarant Control Period. Notwithstanding any provision herein to the contrary, so long as a Class "B" membership exists, Declarant shall either (a) pay twenty-five percent (25%) of the Regular Assessment Declarant would owe pursuant to this Declaration as a Class "A" Member; or (b) as long as Declarant is a Class "B" Member, Declarant, or any assigns of Declarant, shall advance any deficiency in the operating budget of the Association, less capital contributions and reserves for the Common Expenses for the Subdivision, which deficiency shall be reimbursed to Declarant by the Association as funds become available.

Section 7.16. Assessments for Builders. From the date a Builder acquires a Lot until the earlier of (a) the date a single family residence is constructed thereon and sold to another person or (b) the date which is twelve (12) months after the Builder's acquisition of the Lot(s), each Builder shall pay fifty percent (50%) of the Assessments such Builder would owe pursuant to this Declaration as a Class "A" Member.

ARTICLE VIII.

DUTIES AND POWERS OF THE ASSOCIATION

Section 8.01. General Duties and Powers of the Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration and other dedicatory instruments.

Section 8.02. Duty to Manage and Care for Common Area.

- (a) General. The Association shall manage, operate, care for, maintain and repair all Common Areas, including any landscape areas or buffers provided for by the Fencing Plan, and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Common Areas shall include, but not be limited to the management, maintenance, repair and upkeep of the Subdivision and Common Areas.
- (b) City's Right to Remove, Repair, or Replace. The City or its lawful agents

shall have the right and ability, but not the obligation, after thirty (30) days written notice to the Association, to (1) remove, repair or replace any landscape systems, features or elements that cease to be maintained by the Association; (2) perform the responsibilities of the Association and its Board of Directors if the Association fails to do so in compliance with any provisions of this Declaration or the Bylaws, or of any applicable City codes or regulations; (3) assess the Association for all costs incurred by the City in performing said responsibilities, including the construction, operation, and maintenance of the above-described landscape buffer, if the Association fails to do so; and/or (4) avail itself of any other enforcement actions available to the City pursuant to state law or city codes, ordinances, or regulations. The Bylaws of the Association shall contain provisions indemnifying and holding the City harmless from any and all costs, expenses, suits, demands, liabilities or damages including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscape systems, features or elements that cease to be maintained by the Association or from the City's performance of the aforementioned operation, maintenance or supervision responsibilities of the Association due to the Association's failure to perform said responsibilities.

Section 8.03. Duty to Insure. The Association shall obtain such property and casualty, general liability, errors and omission, and other insurance coverages as may be required by law, and as the Association shall deem necessary or desirable. During the Declarant Control Period, the Association shall name the Declarant as an additional insured on any such policy of insurance.

Section 8.04. Duty to Prepare Annual Budget. The Association shall prepare annual budgets for the Association, which shall include a reserve fund for the maintenance of the Common Areas.

Section 8.05. Duty to Levy and Collect Assessments. The Association shall levy, collect and enforce Assessments and other charges as elsewhere provided in this Declaration.

Section 8.06. Duty to Provide Annual Review. The Association shall provide for an annual un-audited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying, pursuant to the Association's Open Records Policy, pursuant to §209.005 of the Property Code.

Section 8.07. Duties with Respect to Architectural Approvals. The Association shall perform functions to assist the Architectural Control Committee as elsewhere

provided in this Declaration.

Section 8.08. Duty to Prepare and Record Management Certificates. The Association shall record in the OPRECT a Management Certificate, signed by an officer of the Association, or the Managing Agent stating the name of the Subdivision, the name of the Association, the recording data of the Subdivision, the recording data of this Declaration, the name and mailing address of the Association, the name and mailing address of the Association's Managing Agent or designated representative, and other information the Association considers appropriate. The Association shall record an amended Management Certificate not later than the thirtieth (30th) day after the Association has a change in any information required herein. The Association, and its officers, Directors, employees, and agents are not subject to liability to any person for a delay in recording, or a failure to record the Management Certificate, unless the delay or failure is caused by gross negligence.

Section 8.09. Power to Acquire Additional Property and Construct Improvements. The Association may acquire additional property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on such property and may demolish existing improvements.

Section 8.10. Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce Rules and Regulations, and levy fines, as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Areas, and the use of any other property, facilities or improvements owned or operated by the Association.

ARTICLE IX.

ENFORCEMENT

Section 9.01. Power to Enforce Restrictions Contained in Association Dedicatory Instruments. The Association or their designated agent shall have the power to enforce the provisions of this Declaration, Bylaws, Design Guidelines and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Owner. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of the dedicatory instruments by any one or more of the following means:

- (a) By entry upon any Lot within the Subdivision, after notice and hearing (unless a bona fide emergency exists in which event this right of entry may

be exercised without written or oral notice to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability in trespass or otherwise by the Association to the Owner thereof, for the purpose of enforcement;

- (b) By commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach;
- (c) By exclusion, after notice and hearing, of any Owner from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues;
- (d) By levying and collecting, after notice and hearing, reimbursement to the Association for the costs incurred by the Association (including, but not limited to pre-litigation attorney's fees) in connection with the remedy of such breach;
- (e) By levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties established in advance in the Rules and Regulations of the Association, from any Member for breach of the dedicatory instruments; and/or
- (f) By taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Owner, plus attorney's fees incurred by the Association with respect to exercising such remedy.

Section 9.02. Duty to Provide Notice Before Enforcement Action. Before the Association may suspend an Owner's right to use the Common Area, file a suit against an Owner other than a suit to collect a Regular or Special Assessment or foreclose under the Association's lien, charge an Owner for property damage, or levy a fine for a violation of the Declaration, Bylaws, Design Guidelines, or Rules and Regulations, the Association or its Managing Agent must give written notice to the Owner by certified mail, return receipt requested. The notice must describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Association from the Owner and inform the Owner that the Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension (unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months), may request a hearing under Section 209.007 of the Act on or before the thirtieth (30th) day after the date the Owner receives the notice, and may have special rights or relief

related to the enforcement action under federal law, including the Service Members Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the Owner is serving on active military duty.

Section 9.03. Hearing Before Board; Alternative Dispute Resolution. If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board or before the Board of Directors if a committee is not appointed. If a hearing is to be held before a committee, the notice prescribed by Section 209.006 of the Property Code must state that the Owner has the right to appeal the committee's decision to the Board by written notice. The Association shall hold a hearing under this section not later than the thirtieth (30th) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting. The Association shall hold a hearing under this section not later than the thirtieth (30th) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting and may use alternative dispute resolution services. The Owner's presence is not required to hold a hearing.

Section 9.04. Attorney's Fees. The Association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the Association relating to collecting amounts, including damages, due the Association for enforcing restrictions contained in its dedicatory instruments only if the Owner is provided a written notice that attorney's fees and costs will be charged to the Owner if the delinquency or violation continues after a date certain. An Owner is not liable for attorney's fees incurred by the Association relating to a matter described by the notice under this Section if the attorney's fees are incurred before the conclusion of the hearing; or, if the Owner does not request a hearing, before the date by which the Owner must request a hearing. All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its Managing Agent. Only Board members or the Association's Managing Agent or employees of its Managing Agent may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs;

provided, however, that nothing contained in this Section shall (a) be construed or interpreted as any waiver of the attorney-client privilege between the Association and its attorneys or (b) require the association, In the giving of any notice required hereunder, to reveal or disclose any attorney-client communications or information relating to legal services performed by such attorneys on behalf of the Association.

ARTICLE X.

SUBDIVISION INFORMATION

Section 10.01. Delivery of Subdivision Information to Owner. Not later than the tenth (10th) business day after the date a written request for Subdivision information is received from an Owner or the Owner's agent, a purchaser of a Lot or Lots in the Subdivision or the purchaser's agent, or a title insurance company or its agent acting on behalf of the Owner or purchaser, and the evidence of the requestor's authority to order a resale certificate is received and verified, the Association shall deliver to the Owner or the Owner's agent, the purchaser or the purchaser's agent, or the title insurance company or its agent a current copy of the Declaration, Bylaws and Rules of the Association and a resale certificate prepared not earlier than the sixtieth (60th) day before the date of delivery that complies with Property Code § 207.003. For a request from a purchaser of property in the Subdivision or the purchaser's agent, the Association may require the purchaser or purchaser's agent to provide to the Association, before the Association begins the process of preparing or delivers the items listed, reasonable evidence that the purchaser has a contractual or other right to acquire property in the Subdivision. A resale certificate must contain a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any other restraint contained in the dedicatory instruments that restricts the Owner's right to transfer the Owner's Lot, the frequency and amount of any Assessment, the amount and purpose of any Special Assessment that has been approved before and is due after the resale certificate is delivered, the total of all amounts due and unpaid to the Association that are attributable to the Owner's Lot, capital expenditures, if any, approved by the Association for the current fiscal year, the amount of reserves, if any, for capital expenditures, the Association's current operating budget and balance sheet, the total of any unsatisfied judgments against the Association, the style and cause number of any pending lawsuit in which the Association is a party, other than a lawsuit relating to unpaid *ad valorem* taxes of an individual member of the Association, a copy of a certificate of insurance showing the Association's property and liability insurance relating to the Common Areas and common facilities, a description of any conditions on the Owner's Lot that the Board has actual knowledge are in violation of the Declaration or Bylaws or Rules, a summary or copy of notices received by the Association from any governmental authority regarding health or housing code violations existing on the preparation date of the resale certificate relating to the Owner's Lot or any Common Areas, the amount of any administrative or

transfer fee charged by the Association or its Managing Agent for a change of ownership of Lots in the Subdivision, the name, mailing address, and telephone number of the Association's Managing Agent, a statement indicating whether the restrictions allow foreclosure of the Association's lien on the Owner's Lot for failure to pay assessments, and a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee. The Association may charge a reasonable fee to assemble, copy, and deliver the information required by this section and may charge a reasonable fee to prepare and deliver an update of a resale certificate. The Association may require payment before beginning the process of providing a resale certificate but may not process a payment until the resale certificate is available for delivery. The Association may not charge a fee if the resale certificate is not provided in the time prescribed. The Association shall deliver the information required to the person specified in the written request. A written request that does not specify the name and location to which the information is to be sent is not effective. The Association may deliver the information required and any update to the resale certificate by mail, hand delivery, or alternative delivery means specified in the written request. Neither the Association nor its Managing Agent is required to inspect a Lot before issuing a resale certificate or an update. Not later than the seventh (7th) business day after the date a written request for an update of a resale certificate is received from an Owner, Owner's agent, or title insurance company, the Association shall deliver to the Owner, Owner's agent, or title insurance company or its agent an updated resale certificate that contains the following information: if a right of first refusal or other restraint on sale is contained in the dedicatory instruments, a statement of whether the Association waives the restraint on sale; the status of any unpaid Regular or Special Assessments, dues, or other payments attributable to the Owner's Lot(s); and any changes to the information provided in the resale certificate issued previously. Requests for an updated resale certificate must be made within one hundred eighty (180) days of the date the original resale certificate was issued. The updated request may be made only by the party requesting the original resale certificate.

Section 10.02. Online Subdivision Information Required. If the Association has, or its Managing Agent on behalf of the Association maintains, a publicly accessible website, the Association shall make the dedicatory instruments and other required documents relating to the Subdivision and filed in the OPRECT available on such website.

ARTICLE XI.

GENERAL PROVISIONS

Section 11.01. Term. The provisions hereof shall run with all Lots within the Subdivision and in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration

is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each.

Section 11.02. **Amendment.** This Declaration may be amended and or modified only in accordance with the following:

- (a) By Declarant. Declarant, during the Development and Declarant Control Periods, reserves the sole and exclusive right, without joinder or consent of any Owner, to (i) amend, restate, modify or repeal, this Declaration and other dedicatory instruments; (ii) amend, revise, modify, or vacate any Plat; and (iii) annex and subject any other property to the scheme of this Declaration, provided that any annexation is not inconsistent with the scheme of the Subdivision. This Declaration or other dedicatory instrument of the Subdivision may not be amended during the period of time between which Declarant loses the majority of voting rights and the time a new Board of Directors of the Association, consisting of Owner Members, assumes office.
- (b) By Owners. This Declaration may be amended or restated only as follows:
 - (i) This Declaration or a particular provision hereof may be Amended or restate by the written agreement or by signed ballots evidencing the vote of not less than sixty-seven percent (67%) percent of the total votes allocated to Owners entitled to vote on the amendment in question, in addition to any governmental approval required by law.
 - (ii) Subject to the provisions of Section 3.05 above, there shall be one (1) vote per Lot, with anyone owning more than one Lot having one (1) vote for each Lot owned.
 - (iii) Such amendment must be approved by said Owners within three hundred and sixty-five (365) days of the date the first Owner executes such amendment. Otherwise, such amendment shall fail. If the amendment is adopted it shall bind and affect the respective Lots whose Owners shall approve such amendment from the time after the date such amendment is approved by each Owner.
 - (iv) The date an Owner's signature is acknowledged shall constitute *prima facie* evidence of the date of execution and adoption of said amendment by such Owner.
 - (v) Those Members entitled to cast not less than sixty-seven percent (67%) of all of the votes of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members

duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting.

- (vi) Any such amendment shall become effective when an instrument is filed for record in the OPRECT, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of Members voted in favor of the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose.
- (c) By the Association. The Board of Directors has the right in its sole judgment, from time to time, and at any time, to amend this Declaration without joinder of any Owner or Member for the following purposes:
 - (i) to resolve or clarify any ambiguity or conflicts herein, or to correct any inadvertent misstatements, errors, or omissions herein; or (ii) to conform this Declaration to the requirements of any lending institution; provided, the Board has no obligation whatsoever to amend this Declaration in accordance with any such lending institution requirements, and the Board may not so amend this Declaration if, in the sole opinion of the Board, any substantive and substantial rights of Owners would be adversely affected thereby;
 - (ii) to conform this Declaration to the requirements of any governmental agency, including the Federal Home Loan Mortgage Corporation, Federal National Mortgage Agency, Veterans Administration, or Federal Housing Administration, and in this respect, the Board shall so amend this Declaration to the extent required by law upon receipt of written notice of such requirements and request for compliance;
 - (iii) to amend the Rules and Regulations of the Association, if the Board deems appropriate to comply with the scheme of the Declaration and the Subdivision; and
 - (iv) to amend the alternative payment schedule for certain assessments, open records policy, records retention policy, and/or other policies to comply with the Act.

- (d) Notwithstanding anything in this Section 11.02 to the contrary, no amendment to any provision of this Declaration or the Bylaws pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, area or grounds, including but not limited to the landscape buffer described developed in accordance with applicable City ordinances, and that are the responsibility of the Association, shall become effective without the prior written consent of the City.

Section 11.03. Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity of unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 11.04. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and estates.

Section 11.05. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to applicable principles of conflict of laws that might otherwise govern, and shall be performable in Ellis County, Texas. The parties hereby submit to the nonexclusive jurisdiction of the United States District Court for the Northern District of Texas and of any State Court sitting in Ellis County, Texas for the purposes of all legal proceedings arising out of or relating to this Agreement or the transaction contemplated hereby. The parties irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

Section 11.06. Notices. All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms of this Agreement to be given to any party hereto shall be in writing, and any such communication shall become effective three (3) business days after being deposited in the United States mails, certified or registered, with appropriate postage prepaid for first class mail or, if delivered by hand or courier service or in the form of a telex, telecopy or telegram, when received (if received during normal business hours on a business day, or if not, then on the next business day thereafter), and shall be directed to the following address or telefax number:

To the Declarant: JK Executive Properties, LLC
Attention: Joshua Trees
3537 S. Highway 287
Waxahachie, Texas 75165

With a copy (which shall not constitute notice) to: James P. Moon, Esq.
Kaplan & Moon, PLLC
P. O. Box 2206
Red Oak, Texas 75154

If to the Association: Four Trees Estates Homeowners Association
Attention: Josh Trees
3537 S. Highway 287
Waxahachie, Texas 75165

If to an Owner: To the street address of the Lot owned by the Owner within the Subdivision, or such other street address as the Owner shall provide to the Association in writing

Section 11.07. Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose and intent of this Declaration.

Section 11.08. Conflicts; Controlling Laws. The Declarant specifically intends that the applicable provisions of the Property Code and other state or federal laws relating to covenants, conditions, and restrictions on subdivisions, as well as homeowners' and other property owners associations, control over any inconsistent provision contained in this Declaration. In the event of a conflict between the provisions of this Declaration and PD-77, the provisions of PD-77 shall control. In the event of a conflict between the provisions of this Declaration and the Property Code, the provisions of the Property Code shall control. Any requirement, restriction, limitation, condition, process, procedure, or right of Declarant, the Association, or an Owner that is not specifically set forth in this Declaration shall be governed, as applicable, by (a) PD-77 or (b) the relevant provision of the Property Code, including Chapters 207 and 209 thereof.

Section 11.09. Successors and Assigns. The provisions hereof shall be binding upon and inure to the benefit of the Owners and the Association, and respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 11.10. Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage

or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

Section 11.11. Terminology. All personal pronouns used in this Declaration and exhibits attached, if any, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural and vice versa. Titles of articles and sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself.

Section 11.12. Number and Gender. Pronouns, whenever used herein, and of whatever gender, shall include natural persons and corporations, entities and associations of every kind and character, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

Section 11.13. No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Association or its agents or employees in connection with any portion of the Subdivision, or any improvement thereon, its or their physical condition, compliance with applicable laws, fitness for intended use, or in connection with the sale, operation, maintenance, cost of maintenance, taxes, or regulation thereof, unless and except as specifically shall be set forth in writing.

Section 11.14. Captions. The titles, headings, captions, articles and section numbers used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration. Unless the context otherwise requires, references herein to articles and sections are to articles and sections of this Declaration.

Section 11.15. Not a Condominium. This Declaration does not and is not intended to create a condominium within the meaning of the Texas Condominium Act.

[Declarant's signature follows on the next page]

IN WITNESS WHEREOF, Declarant hereby executes this Declaration, effective as of the Effective Date.

DECLARANT:

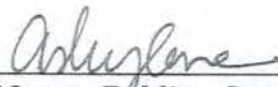
JK EXECUTIVE PROPERTIES, LLC,
a Texas Limited Liability Company

By: 
JOSHUA TREES, Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF ELLIS §

BEFORE ME the undersigned authority, this instrument was acknowledged before me by JOSHUA TREES, the Manager and duly-authorized representative of JK EXECUTIVE PROPERTIES, LLC., a Texas Limited Liability Company, on behalf of said company, on the 19th day of July, 2017.


Notary Public - State of Texas

My Commission expires:

02-26-18

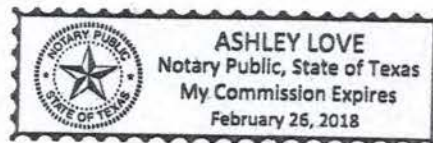


EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Being a tract of land situated in the E. Bryson Survey, Abstract No. 117, the John Crane Survey, Abstract No. 246, and the S. Fredrick Survey, Abstract No. 357, being all of a tract of land conveyed to JT Executive Properties, LLC, as recorded in Instrument Number 201526900 the Official Public Records of Ellis County, Texas, and being a portion of a tract of land described in the Deed to JT Executive Properties, LLC recorded in Instrument Number 1514696 of the Official Public Records of Ellis County, Texas, and being more particularly described as follows:

BEGINNING at a 3/8 inch iron rod found for the southeast corner of the herein described tract;

THENCE South 89 degrees 27 minutes 33 seconds West a distance of 1076.76 feet to a 5/8 inch iron rod found for corner;

THENCE South 01 degrees 43 minutes 44 seconds East a distance of 15.00 feet to a PK Nail found for corner;

THENCE South 89 degrees 41 minutes 19 seconds West a distance of 41.91 feet to a PK Nail found for corner at the beginning of a curve to the left;

THENCE with said curve to the left having a radius of 1195.00 feet, a central angle of 33 degrees 58 minutes 27 seconds, an arc length of 708.59 feet, a chord bearing of North 16 degrees 36 minutes 19 seconds West a distance of 698.25 feet to a 5/8 inch iron rod with cap stamped "R.P.L.S. 5430" found for corner at the beginning of a compound curve continuing to the left;

THENCE with said compound curve continuing to the left having a radius of 945.00 feet, a central angle of 19 degrees 05 minutes 52 seconds, an arc length of 314.99 feet, a chord bearing of North 43 degrees 08 minutes 28 seconds West a distance of 313.53 feet to a 5/8 inch iron rod with cap stamped "R.P.L.S. 5430" found for corner;

THENCE North 52 degrees 41 minutes 24 seconds West a distance of 976.99 feet to a 1/2 inch iron rod found for corner;

THENCE South 89 degrees 20 minutes 57 seconds West a distance of 251.19 feet to a 1/2 inch iron rod found for corner;

THENCE South 44 degrees 19 minutes 38 seconds West a distance of 42.41 feet to a 1/2 inch iron rod found for corner;

THENCE South 89 degrees 20 minutes 57.seconds West a distance of 144.75 feet to a PK Nail found for corner;

THENCE North 00 degrees 27 minutes 47 seconds West a distance of 3042.85 feet to a point from which a 1/2 inch iron rod found bears North 42 degrees 00 minutes 02 seconds East a distance of 2.77 feet;

THENCE South 89 degrees 22 minutes 56 seconds East a distance of 472.54 feet to a 1/2 inch iron rod found for corner;

THENCE South 88 degrees 46 minutes 46 seconds East a distance of 623.23 feet to a 5/8 inch iron rod with cap stamped "R.P.L.S. 5430" found for corner;

THENCE South 00 degrees 27 minutes 47 seconds East a distance of 277.70 feet to a 5/8 inch iron rod with cap stamped "R.P.L.S. 5430" found for corner at the beginning of a curve to the right;

THENCE with said curve to the right having a radius of 280.00 feet, a central angle of 20 degrees 23 minutes 39 seconds, an arc length of 99.66 feet, a chord bearing of South 80 degrees 15 minutes 57 seconds East a distance of 99.14 feet to a 5/8 inch iron rod with cap stamped "R.P.L.S. 5430" found for corner at the beginning of a reverse curve to the left;

THENCE with said reverse curve to the left having a radius of 1421.85 feet, a central angle of 02 degrees 29 minutes 22 seconds, an arc length of 61.78 feet, a chord bearing of South 71 degrees 20 minutes 32 seconds East a distance of 61.77 feet to a 1/2 inch iron rod found for corner;

THENCE South 17 degrees 24 minutes 12 seconds West a distance of 60.00 feet to a 1/2 inch iron rod found for corner at the beginning of a curve to left from which a 1/2 inch iron rod with cap stamped "R.P.L.S. 4613" bears North 63 degrees 39 minutes 38 seconds West a distances of 0.91 feet;

THENCE with said curve to the left having a radius of 1460.00 feet, a central angle of 01 degrees 06 minutes 47 seconds, an arc length of 28.36 feet, a chord bearing of South 73 degrees 09 minutes 11 seconds East a distance of 28.36 feet to a 1/2 inch iron rod found for corner at the beginning of a reverse curve to the right;

THENCE with said reverse curve to the right having a radius of 30.00 feet, a central angle of 87 degrees 41 minutes 32 seconds, an arc length of 45.92 feet, a chord bearing of South

29 degrees 51 minutes 49 seconds East a distance of 41.56 feet to a 1/2 inch iron rod with an illegible yellow cap;

THENCE South 76 degrees 01 minutes 03 seconds East a distance of 60.00 feet to a 1/2 inch iron rod found for corner;

THENCE South 13 degrees 58 minutes 57 seconds West a distance of 185.67 feet to a 1/2 inch iron rod found for corner at the beginning of a curve to the left;

THENCE with said curve to the left having a radius of 800.00 feet, a central angle of 02 degrees 59 minutes 17 seconds, an arc length of 41.72 feet, a chord bearing of South 12 degrees 29 minutes 19 seconds West a distance of 41.72 feet to a 1/2 inch iron rod found for corner;

THENCE South 79 degrees 00 minutes 20 seconds East a distance of 250.00 feet to a 1/2 inch iron rod found for corner;

THENCE South 43 degrees 53 minutes 04 seconds East a distance of 794.70 feet to a 1/2 inch iron rod with cap stamped "R.P.L.S. 4613" found for corner;

THENCE South 37 degrees 46 minutes 38 seconds East a distance of 261.62 feet to a 1/2 inch iron rod with cap stamped "R.P.L.S. 4613" found for corner at the beginning of a curve to the right;

THENCE with said curve to the right having a radius of 780.00 feet, a central angle of 09 degrees 28 minutes 52 seconds, an arc length of 129.07 feet, a chord bearing of North 66 degrees 51 minutes 59 seconds East a distance of 128.92 feet to a 1/2 inch iron rod found for corner;

THENCE South 20 degrees 18 minutes 37 seconds East a distance of 60.04 feet to a 1/2 inch iron rod with an illegible yellow cap found for corner;

THENCE South 18 degrees 14 minutes 00 seconds East a distance of 353.98 feet to a 1/2 inch iron rod with cap stamped "R.P.L.S. 4613" found for corner;

THENCE South 46 degrees 54 minutes 38 seconds East a distance of 210.87 feet to a 1/2 inch iron rod with cap stamped "R.P.L.S. 4613" found for corner;

THENCE North 89 degrees 05 minutes 50 seconds East a distance of 62.81 feet to a 1/2 inch iron rod with cap stamped "R.P.L.S. 4613" found for corner;

THENCE South 00 degrees 54 minutes 10 seconds East a distance of 1214.99 feet to a 1/2 inch iron rod found for corner;

THENCE South 01 degrees 16 minutes 17 seconds East a distance of 1276.43 feet to the POINT OF BEGINNING containing 8,519,699 square feet, or 195.585 acres of land; and

Being further described as Lots 1-6 and CA-1 of Block A; Lots 1-10 of Block B; Lots 1-8 of Block C; Lots 1-32 and CA-4 of Block D; Lots 1-15 and CA-3 of Block E; Lots 1-19 of Block F; Lots 1-48 and CA-2 of Block G; and Lot 1 of Block H, as shown in the Final Plat, dated April 15, 2016, of Four Trees Addition, an addition to the City of Midlothian, Texas, which Final Plat was recorded on May 4, 2016 at Instrument No. 1612042 in the Official Public Records of Ellis County, Texas;

Which Final Plat was amended and modified by that certain Replat, dated June 7, 2017, of Four Trees Addition - Lots 14R and 24R, an addition to the City of Midlothian, Texas, consisting of 22.598 acres situated in the S. Fredrick Survey, Abstract No. 357; the E. Bryson Survey, Abstract No. 117; and the John Crane Survey, Abstract No. 246; as more specifically described by metes and bounds in such Replat, with such Replat being recorded on June 22, 2017 at Instrument No. 1717429, and being all of Lots 14-31 of Block D of Four Trees Addition, an addition to the City of Midlothian, Texas, as recorded in Cabinet I, Slide 652 of the Official Public Records of Ellis County, Texas.