

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR WILSON CREEK ESTATES II**

MT. PROSPER, L.L.C.

COLLIN COUNTY, TEXAS

THIS DECLARATION (herein so called) is made this 19th day of February 19, 1998, by MT. PROSPER, L.L.C., a Texas limited liability company ("Declarant").

RECITALS:

A. Declarant is the owner of the real property described on Exhibit "A" attached hereto and made a part hereof for all purposes (the "Subdivision"), and desires to create thereon a residential community with residential lots, streets and access to utilities for the benefit of the community.

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an owners' association to which would be delegated and assigned the powers of (i) maintaining and administering the common properties and facilities, (ii) administering and enforcing the covenants and restrictions contained herein, and (iii) collecting and disbursing the assessments and charges hereinafter created.

DECLARATION:

Declarant declares that the Subdivision is and shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions"), which Covenants and Restrictions shall run with the land and shall be binding upon any and all purchasers of any lot within the Subdivision and their successors, assigns, heirs, executors and administrators:

Article I

Definitions

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

- 1.01 "Association" shall mean and refer to Wilson Creek Estates II Residential Association, Inc., a Texas non-profit corporation, which will have the power, duty and responsibility of maintaining and administering the Common Properties, and collecting and disbursing the assessments and charges hereinafter prescribed, and will have the right to administer and enforce the Covenants and Restrictions. The Association shall, commencing on the date of recordation of this Declaration and continuing for an indefinite period of time, exist as an unincorporated association and at a point in time deemed appropriate by the Declarant, consistent with the objectives herein and the circumstances then existing, the Declarant will cause the incorporation of the Association as a non-profit corporation under the laws of the State of Texas.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

- 1.02 "Articles of Incorporation" shall mean and refer to the articles of incorporation of the Association as may be amended from time to time.
- 1.03 "Board" or "Board of Directors" shall mean and refer to the board of directors of the Association.
- 1.04 "Bylaws" shall mean and refer to the bylaws of the Association, as may be amended from time to time.
- 1.05 "Mt. Prosper" shall mean and refer to the development located on the Subdivision.
- 1.06 "Lot" shall mean and refer to any plot or tract of land on the plat or plats of the Subdivision, together with any and all improvements that are now or may hereafter be placed or constructed thereon, and subject to any easements, restrictions or other encumbrances burdening same.
- 1.07 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including the Declarant, but excluding any person or entity having an interest in a Lot solely as security for the performance of an obligation.
- 1.08 "Improvement" shall mean and include all buildings and roofed structures, parking areas, fences, walls, driveways, ponds, lakes, swimming pools, tennis courts, changes in any exterior color or shape, and any new exterior construction or exterior improvement.
- 1.09 "Common Properties" shall mean and refer to (i) those certain streets, drives, street lights, street signs, traffic control devices, parkway areas, landscaped medians, landscaping improvements, plantings, screening walls, fencing, and easements, among other amenities, all of which are intended to be devoted to the common use and enjoyment of the Owners; and (ii) any areas of land, improvements or other property rights within the Subdivision which are known, described or designated or which shall subsequently become known, described or designated as Common Properties intended for or devoted to the common use and enjoyment of the Owners, together with any and all improvements that are now or may hereafter be constructed thereon. In certain circumstances, Common Properties may not be owned by the Declarant or the Association in fee, but may, in some instances, be held as an easement, be leased or may simply be areas of land that are not owned or leased by the Declarant or the Association but which are maintained by the Association or the Declarant for the use and benefit of the Owners and the Subdivision. An example of areas of Common Properties which may not be owned or leased by the Association or the Declarant but would constitute a portion of the Common Properties would be landscaped areas appurtenant to and within public rights-of-way. The Declarant may hold record title to all or a portion of the Common Properties, consistent with the objectives envisioned herein and subject to the easement rights herein of the Owners to use and enjoy the Common Properties, for an indefinite period of time and at a point in time (deemed appropriate and reasonable by the Declarant) after the Association has been incorporated, record title to those portions of the Common Properties which are owned by the Declarant in fee, as an

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

easement or otherwise will be transferred from the Declarant to the Association.

- 1.10 "Declarant" shall mean and refer to Mt. Prosper, L.L.C., a Texas limited liability company, and its successors and assigns, if such successors and/or assigns become same by operation of law, or should (i) such successors and/or assigns acquire all or substantially all of the Lots from Mt. Prosper, L.L.C. for the purpose of development, and (ii) any such assignee receives by assignment from Mt. Prosper, L.L.C. all or a portion of their respective rights hereunder as such Declarant, by an instrument expressly assigning such rights of Declarant to such assignee. No person or entity purchasing one or more Lots from Mt. Prosper, L.L.C. in the ordinary course of business shall be considered as "Declarant".
- 1.11 "Properties" shall mean and refer to the properties subject to this Declaration as described on Exhibit "A" attached hereto, together with such additions as may hereafter be made thereto (as provided in Article II).

Article II

The Building and Architectural Control Committee

- 2.01 The Building and Architectural Control Committee (the "Committee") shall be composed of Michael R. Buster ("Buster") and James G. Herblin ("Herblin") or the survivor thereof, or any successors or assigns as such party (or his successors or assigns) may designate.
- 2.02 No Improvement shall be erected, constructed, placed or altered on any portion of the Subdivision until plans and specifications in such form as the Committee may deem necessary shall have been submitted to and approved in writing by the Committee. The decision of the Committee shall be final, conclusive and binding upon the applicant.
- 2.03 Prior to the construction placement, erection or alteration of any Improvement(s), one (1) final set of plans and specifications shall be submitted to the Committee at 501 Elm Street, Suite 350, Dallas, Texas, 75202, or such other address as may be specified from time to time by the Committee and shall include, without limitation, a description of the following: (i) location with respect to Lot lines; topography; finished grades elevation; effect of location and use on neighboring Lots and improvements situated thereon; and any drainage arrangement, (ii) conformity and harmony of external design, color, texture, type and appearance of exterior surfaces and landscaping with existing structures and existing landscaping, (iii) quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets; and (iv) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth in bulletins promulgated by the Committee. The Committee is authorized to request the submission of samples of proposed construction materials or colors of proposed exterior surfaces. Any modification or change to the approved set of plans and specifications which materially affects items (i) through (iv) of the preceding paragraph

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

must again be submitted to the Committee for its inspection and written approval.

- 2.04 Approval of plans and specifications shall be based, among other things, on the general adequacy of size dimensions, structural design, conformity and harmony of exterior design and of location with neighboring structures and sites, relation of finished grades and elevations to neighboring sites and compliance with applicable governmental requirements and conformity to both the specific and general intent of the Restrictions and Covenants. Notwithstanding the foregoing, the Committee is authorized and empowered to consider and review any and all aspects of dwelling construction, construction of other improvements and location, quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Subdivision. As an example, and not by way of limitation, the Committee may impose limits upon the location of window areas of one residential dwelling which would overlook the enclosed patio area of an adjacent residential dwelling. Also, the Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Committee. The Committee may, from time to time, publish and promulgate residential architectural guidelines ("Architectural Guidelines") which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. Such Architectural Guidelines shall supplement these Covenants and Restrictions and are incorporated herein by reference. The Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of these Covenants and Restrictions.
- 2.05 If the Committee fails to approve or disapprove submitted plans and specifications or rejects them as being inadequate within thirty (30) days after submittal thereof, it shall be conclusively presumed that the Committee has disapproved such plans and specifications. In the event any such plans are disapproved by the Committee, such plans shall be returned to the owner, together with a statement of items found not to comply with these restrictions or otherwise satisfactory to the Committee. Any modification or change must be resubmitted to the Committee for further review.
- 2.06 The Committee may, from time to time, in its sole discretion, upon submission of a written request for same, permit construction, erection or installation of Improvements which are in variance from the conditions, covenants or restrictions which are provided herein. No member of the Committee shall be liable to any Owner or other person claiming by, through or on behalf of any Owner, for any claims, causes of action or damages arising out of the granting or denial of, or other action or failure to act upon, any variance requested by an Owner or any person acting for or on behalf of any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests, and the grant of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce the conditions, covenants or restrictions provided herein against any other Owner. Each such

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

written request must identify and set forth in detail the specific Restriction or Covenant from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Committee must be in writing and must identify in narrative detail both the Restriction or Covenant from which a variance is being sought and the specific variance being granted.

- 2.07 The Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvement) if such Improvements were commenced or constructed in violation of this Declaration. In addition, the Association may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such Improvements were commenced or constructed.
- 2.08 Neither the Committee nor the members, employees and agents thereof shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who , submits plans or specifications and every Owner agrees that he will not bring any action or suit against the Committee or the members, employees or agents thereof, to recover any such damages, and hereby releases all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Plans and specifications are not approved for engineering or structural design or adequacy of materials, and by approving such plans and specifications, neither the Committee nor the members thereof assumes liability or responsibility thereof, nor for any defect in any structure constructed from such plans and specifications.

Article III

Protective Covenants

The following provisions shall be applicable to any and all construction on, alterations and additions to, or use of, any property within the Subdivision and all improvements located thereon:

- 3.01 Any restrictions contained herein shall not be intended to restrict or prohibit, and shall not restrict or prohibit the State of Texas or any political subdivision thereof, including independent school districts, from using any of the property affected hereby for public purposes, regardless of the nature of said use.
- 3.02 No Lot or any portion thereof shall be used for business purposes, or for any purpose other than a private, single-family residence with the customary outbuildings and garage, as and to the extent permitted herein. No Owner or other occupant shall use or occupy such owner's

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

Lot, or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single family detached residence for the Owner or such Owner's tenant and their families and domestic servants employed on the premises. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of any Lot for a duplex apartment, garage apartment, or other apartment use. No more than one (1) detached single family residence may be built on any Lot, which detached single family residence may not exceed three (3) stories in height or, unless otherwise approved in writing by the Committee, have for the use thereof more than one (1) private garage (with or without an attached carport) for not less than two (2) or more than four (4) automobiles. Each residential dwelling erected on any Lot shall provide garage space for not less than two (2) or more than four (4) automobiles. All garage doors shall be equipped with an automatic and remote controlled door opener, and shall be closed at all times when not in use. Detached garages, servants quarters, and storage rooms must be approved in writing by the Committee. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles, unless a new garage is constructed to meet the requirements of this Section. Carports must be attached to the garages and will not be allowed otherwise, unless approved by the Committee. All detached garages must be attached to the residence by covered breezeway, unless approved by the Committee.

- 3.03 No temporary structure of any kind shall be erected on any Lot, and in no event shall any residential dwelling upon any Lot be occupied, until it has been fully completed in accordance with plans and specifications approved by the Committee. The preceding sentence shall not be applied to or construed to prevent sheds or workshops for use in connection with the constructing or building of permanent residences, which shall be permitted in the course of construction upon any Lot, as and to the extent approved by the Committee.
- 3.04 Notwithstanding any of the above restrictions to the contrary, Declarant shall have the right to use any lot owned by Declarant for the erection and operation of a sales office, construction office and/or model home(s) until the date on which all Lots are sold to third parties and the initial construction of all residences thereon has been substantially completed.
- 3.05 Neither the Declarant nor its successors or assigns shall be liable for any loss of, use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, walks, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters. After the residence to be constructed on a Lot has been substantially completed, the Lot will be graded so that surface water will flow to streets, alleys, drainage easements, or Common Properties, and in conformity with the general drainage plans for the Subdivision.
- 3.06 The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except portable gas grills), shall require the prior written approval of the Committee. Such tank, bottle or cylinder must be installed underground. Any control boxes, valves, connections, utility risers or refilling or refueling

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

devices shall be completely landscaped with shrubbery so as to obscure their visibility from the streets within or adjoining the Subdivision or from any other Lot.

- 3.07 No Lot or portion thereof shall be used in any manner which generally constitutes a nuisance or which involves offensive or noxious odors, excessive emission of smoke, dust, steam or vapor, or an excessive noise level.
- 3.08 No Lot or portion thereof shall be subdivided without the prior written approval of the Committee. No residence shall be built on any Lot that is less than one (1) acre.
- 3.09 No Lot or portion thereof shall be used for the keeping, breeding or maintenance of any animals or domestic fowl (other than as expressly permitted in this Section 3.09). Dogs, cats or other household pets may be kept in reasonable numbers provided that they are not kept, bred or maintained for any commercial purposes (for purposes of this sentence, the term "reasonable numbers" shall mean a total of no more than five (5) dogs, cats or other household pets per Lot). For example, two (2) dogs and three (3) cats would total five (5) household pets.
- 3.10 No Lot or portion thereof shall be used as a dumping ground for rubbish. Trash, garbage or waste shall not be kept except in sanitary containers which are not visible from the front of any Lot. All equipment for the storage and disposal of such materials shall be kept clean and in a sanitary condition.
- 3.11 Unless otherwise approved in writing by the Committee, no radio or television tower or antenna shall be constructed or erected on any Lot which extends higher than fifteen (15) feet over the highest point of the residential structure constructed on such Lot (including chimney) or extends higher than thirty-five (35) feet from the ground level of the Lot if such tower or antenna is not attached to such residential structure. No other permanent attachment of any kind or character shall be made to the roof or walls of any residence unless such attachments shall have been first submitted to and approved by the Committee.
- 3.12 No vehicle of any kind or character, truck, boat, trailer, tent, or camper shall be parked or left on any street within the Subdivision, except that vehicles operated by guests of Owner(s) may be temporarily parked on such street during the hours of functions sponsored by the Owner(s). No vehicle of any size which normally transports flammable or explosive cargo may be kept within the Subdivision or on any Lot at any time.
- 3.13 All residences or other structures constructed or erected upon any Lot shall be of new construction and in no event shall any prefabricated or existing structures be moved onto any Lot; provided, however, that with the express prior written approval of the Committee, an Owner may transport and attach an approved historical home to any Lot or locate prefabricated storage buildings on such Owner's Lot.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

- 3.14 No communication receiving or transmitting device or equipment shall be used on any Lot which interferes with the television reception on any other Lot without the prior written consent of the Committee, which consent may be withheld or, once given, revoked for any reason. Satellite receivers may be allowed if constructed and maintained in a manner approved in writing by the Committee.
- 3.15 No air conditioning apparatus shall be installed on the ground in front of a residence or attached to any front wall of a residence. All air conditioning apparatus shall be screened in a manner acceptable to the Committee. All electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities, and other utility services, shall be installed underground in a manner approved in writing by the Committee.
- 3.16 Seventy-five percent (75%) of the area of outside walls, exclusive of doors, windows and gable area, of any and all dwellings and garages shall be brick, stone, stucco, brick veneer or stone veneer, then equivalent or better, unless approved in writing by the Committee. The roof pitch of any structure must be approved in writing by the Committee. Exterior paint and stain colors shall be subject to the written approval of the Committee. No above ground-level swimming pools shall be installed on any Lot.
- 3.17 No hunting or shooting of firearms is allowed on any Lot.
- 3.18 No motorcycles, minibikes or off-road vehicles shall be permitted to use any part of the Subdivision other than the streets and driveways provided therein and, with an Owner's permission, the Lot of an Owner.
- 3.19 Fencing shall be constructed of pipe and cable any shall be painted black in color. Pipe and cable fencing materials to be used shall be 2 3/8" new or new reject pipe, 15/32" new or used shotline cable with dome caps on all open ends. All other fencing is prohibited without the prior written consent of the Committee. Fences may be lined with heavy wire panels to ensure household pet containment. Such wire panels must be approved in writing by the Committee prior to installation. Upon submission of a written request, the Committee may, from time to time, at its sole discretion, permit Owners to construct fences or walls which are in variance with the provisions of this paragraph where, in the opinion of the Committee, the fence or wall is an integral part of the home.
- 3.20 The total habitable area of the main structure on each Lot shall not be less than 3,000 square feet, exclusive of porches, stoops, breezeways, terraces and garages (including any attached carports), unless approved in writing by the Committee. Of such 3,000 square feet, not less than 2,100 square feet shall be covered ground floor area if such dwelling constitutes either a two-story or three-story structure. All structures shall be heated or cooled by central air-conditioning and heating units, or with comparable facilities.
- 3.21 No portable buildings shall be allowed on any Lot, except as expressly permitted in this Declaration.
- 3.22 The speed limit within the Subdivision shall be 25 miles per hour.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

- 3.23 All residences or dwellings erected or placed on any Lot shall face the front road or street adjacent to the Lot as shown on the Plat unless otherwise required by the Committee. No structure of any kind, residential or otherwise, shall be constructed less than fifty (50) feet from the center line of the road or street adjacent to any Lot, unless otherwise shown on the Plat. No structure shall be located nearer than fifty (50) feet to an interior lot line, unless approved in writing by the Committee. No structure shall exceed three (3) stories in height.
- 3.24 No sign of any kind shall be displayed to the public view on any lot, except one sign of not more than sixteen (16) square feet, advertising the property for sale or rent, or signs of not more than sixteen (16) square feet used by a builder or finance company to advertise the property during the construction and sales period.
- 3.25 No garage on or erected upon any lot or lots hereof shall be constructed so that the entrance (through which the vehicles housed therein make ingress or egress) fronts or opens to the street or streets upon which the respective Lot or Lots front. All such entrances shall front or open at the side or at the rear of such Lot or Lots.
- 3.26 If a residence is not completed on any Lot on or before nine (9) months from the beginning date of construction, the Owner will pay to Declarant for each such Lot the sum of \$150 per day beginning on the first day thereafter and continuing until the final completion of the residence, as liquidated damages. Declarant shall have the right to grant extensions of the aforesaid nine (9) month period from time to time in its sole discretion for reasonable cause.
- 3.27 Landscaping will conform to the following:
1. Landscaping must permit reasonable access to public and private utility lines and easements for installation and repair.
 2. Landscaping may not divert in any way creeks or increase such creeks in size through dams or other obstructions, without the prior written permission from the Committee.
 3. Any Lot purchased but left vacant shall be mowed and maintained at all times.
- 3.28 All roofs on homes must have grey composition shingles unless otherwise approved in writing by the Committee.
- 3.29 Driveways shall be constructed of concrete or other material as expressly approved by the Committee. No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot except as expressly provided on the Plat, or otherwise approved in writing by the Committee.
- 3.30 Each Owner of a Lot takes and accepts title with the knowledge, understanding and acceptance of the existing drainage situation with respect to such Lot. The Owner shall accept the drainage as it exists at the time of purchase regardless of whether it is natural

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

drainage or created as a result to the development of improvements to the Property.

- 3.31 Easements for the installation, maintenance, repair and removal of utilities and drainage facilitates over, under and across a portion of the front, side and back boundaries of each Lot are hereby reserved by Declarant as shown on the Plat of the Subdivision, and Declarant shall have the right to assign and transfer such easements to or for the benefit of any public utility.
- 3.32 No exterior light, including landscape lightning, shall be installed or maintained on any Lot without the prior written approval of the Committee. Further, and notwithstanding such prior written approval, upon being given notice by the Committee that any exterior light is objectionable, the Owner of the Lot on which same is located will immediately remove said light or shield the same in such a way that it is no longer objectionable.
- 3.33 Except in conjunction with construction and drainage work relating to a residence, the removal of dirt, stone, gravel or other materials from any Lot for any purpose is forbidden without written permission from the Committee.
- 3.34 No oil drilling, water drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, water wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot without prior written permission from the Committee. No derrick or other structure designed for use in boring for oil, natural gas or water shall be erected, maintained or permitted upon any Lot without prior written permission from the Committee.
- 3.35 The Common Properties (including landscaping comprising portions of the Common Properties) after being conveyed by the Declarant to the Association, shall be owned and maintained by the Association.
- 3.36 Retaining walls visible from any portion of the Common Properties shall be restricted to structurally engineered and designed walls made from natural stone or split faced concrete masonry units matching the retaining walls in the Common Properties. It shall be the intent of Declarant, the Association and the Committee to promote visual continuity in and around the Common Properties.
- 3.37 The provisions of this Article III are in addition to any architectural guidelines and/or published architectural bulletins promulgated by the Committee, and the applicable provisions of Article II hereof, and shall be construed as complementary to each other. Nothing contained herein shall prevent the Association from enforcing any and all other published architectural standards and bulletins in accordance with their respective provisions. If any provisions contained in any architectural guidelines or other published architectural bulletins promulgated by the Committee or the provisions of this Declaration pertaining to the construction, development, reconstruction, repair, occupation and use of the Properties and each Lot, conflict with one another, the Committee shall have the authority to make final decisions in interpreting and resolving any such conflicts.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

Article IV

Association

4.01 **Membership.** Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration.

4.02 **Quorum, Notice and Voting Requirements.**

- (a) Subject to the provisions of Paragraph (c) of this Section, any action taken at a meeting of the Members shall require the assent of the majority of all of the votes of the Members entitled to vote who are voting in person or by proxy, at a meeting duly called, written notice of which shall be given to all Members not less than ten (10) days nor more than fifty (50) days in advance.
- (b) The quorum required for any action referred to in Paragraph (a) of this Section shall be as follows:

The presence at the initial meeting of Members entitled to cast, or of proxies entitled to cast, a majority of the votes of all Members, regardless of class, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Bylaws or this Declaration or as provided by the laws of the State of Texas. If the required quorum is not present or represented at the meeting, one additional meeting may be called, subject to the notice requirement herein set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such second meeting shall be held more than sixty (60) days following the first meeting.

- (c) As an alternative to the procedure set forth above, any action referred to in Paragraph (a) of this Section may be taken without a meeting if a consent in writing, approving of the action to be taken, shall be signed by all Members.
- (d) Except as otherwise specifically set forth in this Declaration, notice, voting and quorum requirements for all actions to be taken by the Association shall be consistent with its Articles of Incorporation and Bylaws, as same may be amended from time to time.
- (e) During the period of time that the Association is unincorporated, the Declarant shall have the sole right and option to prescribe reasonable procedures for the meetings (if any) of the Members; provided, however, that prior to incorporation, without the written approval of the Declarant, no Member (other than Declarant) shall have a right to vote on any matter, or to call any meetings of the Members. Except as specifically set forth in this Declaration, notice, voting and quorum require-

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

ments for all action to be taken by the Association (as an incorporated entity) shall be consistent with its Articles of Incorporation and Bylaws, as same may be amended from time to time.

- (f) Notwithstanding the voting rights within the Association, until the Declarant no longer owns record title to any Lot or the tenth (10th) anniversary of the date this Declaration was recorded in the Office of the County Clerk of Collin County, Texas, whichever occurs first in time, the Association shall take no action with respect to any matter whatsoever without the prior written consent of the Declarant.

Article V

Covenants for Assessments

5.01 Creation of the Lien and Personal Obligation of Assessments.

Declarant, for each Lot owned by it, hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the Lot), to pay to the Association (or to an entity or collection agency designated by the Association): (1) annual maintenance assessments or charges (as specified in Section 5.03 hereof), such assessments to be fixed, established and collected from time to time as herein provided; (2) special assessments for capital improvements and other purposes (as specified in Section 5.04 hereof), such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual special assessments levied against one or more Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of such Owner or Owners, his tenants (if applicable), and their respective family, agents, guests and invitees, and not caused by ordinary wear and tear (as specified in Section 5.04 hereof), all of such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual maintenance, special capital, and special individual assessments described in this Section 5.01 (hereinafter, the "Assessment" or the "Assessments"), together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which any such Assessment is made. Each such Assessment, together with interest thereon, attorneys' fees, court costs, and other costs of collection thereof shall also be the continuing personal obligation of the Owner of such Lot at the time when the Assessment fell due. Further, no Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by abandonment of his Lot. Existing obligations of an Owner to pay Assessments and other costs and charges shall not pass to bona fide first lien mortgagee whose lien arises in whole or in part by reason of purchase or other conveyance of a Lot and/or construction of improvements thereon which become Owners by reason of

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

foreclosure proceedings or an action at law subsequent to the date the Assessment was due; provided, however, any such foreclosure proceeding or action at law shall not relieve such new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment.

- 5.02 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for (i) the purpose of promoting the recreation, comfort, health, safety and welfare of the Owners and/or the residents of the Subdivision; (ii) managing any Common Properties within the Subdivision; (iii) enhancing the quality of life in the Subdivision and the value of the Subdivision; (iv) improving and maintaining any Common Properties within the Subdivision, the properties, services, improvements and facilities devoted to or directly related to the use and enjoyment of any Common Properties within the Subdivision, including, but not limited to, the payment of taxes on such common properties and insurance in connection therewith and the repair, replacement and additions thereto; (v) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, any Common Properties within the Subdivision; (vi) carrying out the powers and duties of the Board of Directors of the Association as set forth in this Declaration and the Bylaws of the Association; (vii) carrying out the purposes of the Association as stated in its Articles of Incorporation of the Association; and (viii) carrying out the powers and duties relating to the Committee, after Declarant has delegated or assigned such powers and duties to the Association.

5.03 **Annual Maintenance Assessments.**

- (a) Each Owner shall pay to the Association an annual maintenance assessment in such amount as set by the Board of Directors at any regularly scheduled meeting at which the first annual maintenance assessment is adopted, and thereafter the annual maintenance assessment in such amount as the Board of Directors, at its annual meeting next preceding the date of commencement of such assessment. The date of commencement of the first annual maintenance assessment and each annual maintenance assessment thereafter shall be determined by the Board of Directors.
- (b) Subject to the provisions of Section 5.03(c) hereof, the rate of annual maintenance assessments may be increased by the Board. The Board may, after consideration of current maintenance, operational and other costs and the future needs of the Association, fix the annual maintenance assessments for any year at a lesser amount than that of the previous year.
- (c) An increase in the rate of the annual maintenance assessments as authorized by Section 5.03(b) hereof in excess of twenty-five percent (25%) of the preceding year's annual maintenance assessments must be approved by the Owners in accordance with Section 4.02 hereof.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

- (d) Notwithstanding anything herein contained to the contrary, prior to January 1, 1999, the maximum annual maintenance assessment chargeable against any Lot shall not exceed \$200.
- (e) The Board of Directors may provide that annual maintenance assessments shall be paid monthly, quarter-annually, semi-annually or annually on a calendar year basis. Not later than thirty (30) days prior to the beginning of each full fiscal year of the Association, the Board shall (i) estimate the total expenses to be incurred by the Association for the forthcoming fiscal year, (ii) determine, in a manner consistent with the terms and provisions of this Declaration, the amount of the annual maintenance assessments to be paid by each Owner, and (iii) establish the date of commencement of the annual maintenance assessments. Written notice of the annual maintenance assessments to be paid by each Owner and the date of commencement thereof shall be sent to every Owner, but only to one (1) joint Owner. Each Owner shall thereafter pay to the Association his annual maintenance assessment in such manner as determined by the Board of Directors.
- (f) The annual maintenance assessments shall include reasonable amounts, as determined by the Owners or by the Board, collected as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Properties within the Subdivision. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited in a separate bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association. Assessments collected as reserves shall not be considered to be advance payments of regular annual maintenance assessments.

5.04 Special Capital Assessments and Special Individual Assessments.

- (a) In addition to the annual maintenance assessments authorized in Section 5.03 hereof, the Board of Directors of the Association may levy in any calendar assessment year a special capital assessment for the purpose of (i) defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Common Properties within the Subdivision, including the necessary fixtures and personal property related thereto (ii) maintaining portions of the Common Properties within the Subdivision and improvements thereon, or (iii) carrying out other purposes of the Association; provided, however, that any such special capital assessment levied by the Association shall have the approval of the Owners in accordance with Section 4.02 hereof. Any special capital assessment levied by the Association shall be paid by the Owners directly to the Association on such date or dates as determined by the Board of Directors. All such amounts collected by the Association may only be used for the purposes set forth in this Section 5.04 and shall be deposited by the Board of Directors in a separate bank account to be held in trust for such purpose. These funds shall not be commingled with any other funds of the Association.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

(b) The Board of Directors of the Association may levy special individual assessments against one or more Owners for (i) reimbursement to the Association of the costs for repairs to such Owner's Lot(s) or Common Properties within the Subdivision and improvements thereto occasioned by the willful or negligent acts of such Owner or Owners and not ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against an Owner or Owners relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws of the Association or any rules or regulation promulgated hereunder. Any special individual assessment levied by the Association shall be paid by the Owner or Owners directly to the Association. All amounts collected by the Association as special individual assessments under this Section 5.04 shall belong to and remain with the Association.

5.05 **Uniform Rate of Annual Maintenance Assessments and Special Capital Assessments.** Both annual maintenance assessments and special capital assessments (excepting therefrom special individual assessments) must be fixed at a uniform rate for all Lots, and be payable as set forth herein.

5.06 **Date of Commencement of Assessments; Due Dates; No Offsets.** The annual maintenance assessments provided for herein shall commence on the date fixed by the Board of Directors to be the date of commencement and, except as hereinafter provided, shall be payable monthly, quarter-annually, semi-annually or annually, in advance, on the first day of each payment period thereafter, as the case may be and as the Board of Directors shall direct. The first annual maintenance assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual maintenance assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual maintenance assessment provided for in Section 5.03 hereof as the remaining number of months in that year bears to twelve; provided, however, that if the date of commencement falls on other than the first day of a month, the annual maintenance assessment for such month shall be prorated by the number of days remaining in the month. The due date or dates, if to be paid in installments, of any special capital assessment or special individual assessment under Section 5.04 hereof shall be fixed in the respective resolution authorizing such assessment. Annual maintenance, special capital and special individual assessments may be established, collected and enforced by the Declarant at any time prior to the incorporation of the Association. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason.

5.07 **Duties of the Board of Directors with Respect to Assessments.**

(a) The Board of Directors shall fix the date of commencement and the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

- (b) Written notice of all assessments shall be delivered or mailed to every Owner subject thereto. Such notice shall be sent to each Owner at the last address provided by each Owner, in writing, to the Association.
- (c) The omission of the Board of Directors to fix the assessments within the time period set forth above for any year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.
- (d) The Board of Directors shall upon demand at any time furnish to any Owner liable for said assessment a certificate signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

5.08 Non-Payment of Assessment.

- (a) Delinquency. Any Assessment, or installment thereof, which is not paid in full when due shall be delinquent on the day following the due date (herein, "delinquency date") as specified in the notice of such Assessment. The Association shall have the right to reject partial payment of an Assessment and demand full payment thereof. If any Assessment or part thereof is not paid within ten (10) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from and after the delinquency date until paid at a rate equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum lawful rate.
- (b) Lien. The unpaid amount of any Assessment not paid by the delinquency date shall, together with the interest thereon as provided in Section 5.08(a) hereof and the cost of collection thereof, including reasonable attorneys' fees, become a continuing lien and charge on the Lot of the non-paying Owner, which shall bind such Lot in the hands of the Owner, and his heirs, executors, administrators, devisees, personal representatives, successors and assigns. The lien shall be superior to all other liens and charges against the Lot, except only for tax liens and the lien of any bona fide first mortgage or first deed of trust now or hereafter placed upon such Lot whose lien arises in whole or in part by reason of purchase or other conveyance of such Lot and/or construction of improvements thereon. A subsequent sale or assignment of the Lot shall not relieve the Owner from liability for any Assessment made prior to the date of sale or assignment and thereafter becoming due nor from the lien of any such Assessment. The Board shall have the power to subordinate the lien securing the payment of any Assessment rendered by the Association to any other lien. Such power shall be entirely discretionary with the Board. As hereinbefore stated, the

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

personal obligation of the Owner incurred at the time of such Assessment to pay such Assessment shall remain the personal obligation of such Owner and shall not pass as a personal obligation to such Owner's successors in title unless expressly assumed by them in writing. Liens for unpaid Assessments shall not be affected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by abandonment of his Lot or otherwise.

To evidence any lien, the Association shall prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot covered by such lien. Such notice shall be executed by one of the officers of the Association and shall be recorded in the Office of the County Clerk of Collin County, Texas.

- (c) **Remedies.** The lien securing the payment of the Assessments shall attach to the Lot belonging to such non-paying Owner with the priority set forth in this Section. Subsequent to the recording of a notice of the lien, the Association may institute an action at law against the Owner or Owners personally obligated to pay the Assessment and/or for the foreclosure of the aforesaid lien. In any foreclosure proceeding the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. In the event an action at law is instituted against the Owner or Owners personally obligated to pay the Assessment there shall be added to the amount of any such Assessment:

- (i) the interest provided in this Section,
- (ii) the costs of preparing and filing the complaint in such action,
- (iii) the reasonable attorneys' fees incurred in connection with such action, and
- (iv) any other costs of collection;

and in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided in this Section and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents or trustees the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code, as amended from time to time and any successor statute, and such

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also suspend the Association membership and voting rights of any Owner who is in default in payment of any Assessment and take such other actions it deems appropriate in accordance with this Declaration and/or the Bylaws.

- (d) Notice to Mortgagees. The Association may, and upon the written request of any mortgagee holding a prior lien on any Lot, shall report to said mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the delinquency date of such Assessment

5.09 Subordination of the Lien to Mortgages. The lien securing the payment of the Assessments shall be subordinate and inferior to the lien of any bona fide first lien mortgage or deed of trust now or hereafter recorded against any Lot whose lien arises in whole or in part by reason of purchase or other conveyance of such Lot and/or construction of improvements thereon; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale, whether public or private, of such property pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve the new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent assessment.

5.10 Estoppel Information from Board with Respect to Assessments. The Board shall upon demand at any time furnish to any Owner liable for an Assessment, a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board of Directors of the Association for the issuance of such certificates.

Article VI

General Powers and Duties of Board of Directors of the Association

6.01 Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors. Prior to the incorporation of the Association, the Declarant shall select and appoint the Board of Directors, each of whom shall be an Owner, or an officer, employee, representative or agent of an Owner. From and after the effective date of the Association's incorporation, the Board of Directors shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Subdivision, the Common Properties and the Owners, shall provide and pay for, out of the funds(s) collected by the Association pursuant to Article V above, the following:

- (a) Care and preservation of the Common Properties and the furnishing and upkeep of any desired personal property for

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

use in the Common Properties. Expenditures for the repair or installation of capital improvements, not included in the annual maintenance budget, may be paid from the reserve fund as specifically provided in Section 6.05 herein.

(b) Care and maintenance of the landscaping, screening walls and entry features which may be constructed by Declarant on the Common Properties or on private property. Maintenance includes all repair, rebuilding or cleaning deemed necessary by the Board of Directors.

(c) The services of a person or firm to manage and/or provide consultation to the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(d) Legal and accounting services.

(e) A policy or policies of insurance ensuring the Association, its officers and directors against any liability to the public or to the Owners (and/or their invitees or tenants) incident to the operation of the Association, including, without limitation, officers' and directors' liability insurance.

(f) Any other materials, supplies, insurance or property owned by the Association, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

(g) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Properties.

(h) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on one or more Lots with respect to: (i) taxes on the Common Properties and (ii) insurance coverage of the Common Properties, as they relate to the assessment, collection and disbursement process envisioned in this Declaration.

(i) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(j) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association and the Common Properties, expressly including the power to enter into management and maintenance contracts.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

(k) If, as, and when the Board, in its sole discretion, deems necessary it may take action to protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements.

(l) To make reasonable rules and regulations for the operation and use of the Common Properties and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Properties, by a majority of the Members in the portions affected.

(m) Subsequent to incorporation, to make available to each Owner upon request, within one hundred twenty (120) days after the end of each year, an unaudited annual report.

(n) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(o) If, as and when the Board, in its sole discretion, deems necessary, it may take action to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions or rules.

(p) Should the Board so elect, maintenance of exterior grounds, drives, parkways, private streets and access areas, including care of trees, shrubs and grass, the exact scope of which shall be further specified by the Board from time to time. In particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the maintenance of landscaping, trees, shrubs, grass and like improvements which are located on the Common Properties and/or the Lots, except for landscaping and other like improvements which are located within rear yards or side yards enclosed by solid fence, which shall be maintained by the individual Lot Owner. Maintenance services contracted for by the Board in accordance with this paragraph shall be paid for out of Association funds.

(q) Security services and maintenance of the security system (including, but not limited to, a guard house, guard service and controlled access gates) which may be constructed by Declarant on the Common Properties or on private property, in Declarant's sole and absolute discretion. Maintenance may include, but not be limited to, all repairs, rebuilding and cleaning as required. The exact scope of security services shall be further specified by the Board from time to time. In particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the operation and maintenance of the security system, including security guard service. Security services contracted for by the Board in accordance with this paragraph shall be paid for out of

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

Association funds. Each Owner by acceptance of a deed to a Lot, acknowledges that neither the Declarant, nor the Association expressly or impliedly warrants (and Declarant and the Association hereby expressly negates) the following: that Declarant, or the Association bears any responsibility for malfunctioning or non-functioning of the security system; that the security system or the monitoring services provided to the Subdivision or Common Properties will prevent any loss by fire, criminal or tortious act; or that the security system and any monitoring services provided with respect thereto will provide, at all times, the protection desired by the Owner. Each Owner acknowledges that neither the Declarant, nor the Association has made nor makes (and each hereby expressly negates and denies) any representations or warranties, either express or implied, with respect to any security system or services provided or to be provided with respect thereto to the Subdivision or the Common Properties. No person has been authorized by the Declarant or the Association to make any such representation or warranty, and if given or made, such representation or warranty must not and may not be relied upon as having been authorized by the Declarant or the Association. Each Owner hereby acknowledges that he or it has not relied on any such representations or warranties.

(r) Workers' compensation insurance to the extent necessary to comply with any applicable laws or the establishment of a special reserve fund or funds and policies designed to provide a "self-insurance" plan which complies with applicable law as the Board so elects.

(s) Such fidelity bonds as may be required by the Bylaws of the Association or as the Board may determine to be advisable.

- 6.02 **Board Powers.** From and after the date on which the title to the Common Properties has been conveyed to the Association, the Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.
- 6.03 **Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.
- 6.04 **Liability Limitations.** No Member, officer of the Association or member of the Board of Directors shall be personally liable for debts contracted for, or otherwise incurred by the Association, or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its directors, officers, agents, or employees shall be liable for any incidental or consequential damages for failure to

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

inspect any premises, improvements or portion thereof or for failure to repair or maintain the same.

The Common Properties may be subject to storm water overflow, natural bank erosion and other natural or man-made events or occurrences to extents which cannot be defined or controlled. Under no circumstances shall Declarant ever be held liable for any damages or injuries of any kind or character or nature whatsoever resulting from: (i) the occurrence of any natural phenomena; (ii) the failure or defect of any structure or structures situated on or within the Common Properties; and (iii) any act, conduct, omission or behavior of any individual, group of individuals, entity or enterprise occurring on, within or related to the Common Properties.

- 6.05 **Reserve Funds.** The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Subdivision, and maintaining the Subdivision and Improvements therein, all as may be more specifically authorized from time to time by the Board of Directors. Capital expenditures from this fund may include by way of example, but not be limited to, street and street light repair, lake and drainage channel improvements or other repair of major damage to the Common Properties not covered by insurance.

ARTICLE VII

USE OF COMMON PROPERTIES

The Common Properties may be occupied and used as follows:

- 7.01 **Restricted Actions by Owners.** No Owner shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increase of any insurance carried by the Association. No waste shall be committed in or on the Common Properties.
- 7.02 **Damage to the Common Properties.** Each Owner shall be liable to the Association for any damage to the Common Properties caused by the negligence or willful misconduct of the Owner or such Owner's family, guests, pets, tenants or invitees.
- 7.03 **Rules of the Board.** All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

liable to the Association for all damages and costs, including reasonable attorney's fees, incurred by the Association in connection therewith.

ARTICLE VIII

PROPERTY RIGHTS IN THE COMMON PROPERTIES

- 8.01 **Owners' Easements of Enjoyment.** Subject to the provisions of this Declaration, every Owner and every tenant of every Owner, who resides on a Lot, and each individual who resides with either of them, respectively, on such Lot shall have a non-exclusive right and easement of use and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title of every Lot; provided, however, such easement shall not give such person the right to make alterations, additions or improvements to the Common Properties.
- 8.02 **Title to the Common Properties.** The Declarant shall dedicate and convey the fee simple title to the Common Properties to the Association at such point in time deemed reasonable and appropriate by the Declarant. Prior to the date the Common Properties are conveyed to the Association, the Declarant shall retain the right to sell portions of the Common Properties to Owners if Declarant, in its sole discretion, deems such sale to be for the best interest of the development.
- 8.03 **Extent of Owners' Easements.** The rights and easements of enjoyment created hereby shall be subject to and limited by the following:
- (a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties.
 - (b) Liens of mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Declarant to develop and improve the Common Properties or by the Association to improve or maintain all or any portion of the Common Properties;
 - (c) The right of the Association to enter into and execute contracts with parties (including the Declarant or an affiliate of the Declarant) for the purpose of providing maintenance for all or a portion of the Common Properties or providing materials or services consistent with the purposes of the Association;
 - (d) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;
 - (e) The right of the Association, as may be provided in its Bylaws of the Association, to suspend the voting rights of any Owner and to suspend the right of any individual to use any of the Common Properties for any period during which any assessment against a Lot owned by such individual remains unpaid,

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;

(f) The right of the Declarant or the Association, subject to approval by written consent by the Owner (s) having a majority of the outstanding votes of the Owners, in the aggregate, regardless of class, to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility company for such purposes and upon such conditions as may be agreed to by such Owners;

(g) The right of the Declarant or the Association, at any time, to make such reasonable amendments to the plat of the Subdivision recorded in the Real Property Records of Collin County, Texas (the "Plat"), as it deems advisable, in its sole discretion. All Owners are advised that a portion of the Common Properties may be located within the platted and dedicated public rights-of-way and in connection therewith the public shall have rights of use and enjoyment of Common Properties located within the public rights-of-way; and

(h) With respect to any and all portions of the Common Properties, Declarant, until Declarant no longer owns record title to any Lot or the tenth (10th) anniversary of the date this Declaration was recorded in the Office of the County Clerk of Collin County, Texas, whichever is the first to occur, shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City of Prosper, Texas or any other governmental agency having appropriate jurisdiction over the Common Properties) to: (i) alter, improve, landscape and/or maintain the Common Properties; (ii) rechannel, realign, dam, bridge, bulwark, culvert and otherwise employ or utilize construction and/or engineering measures and activities of any kind or nature whatsoever upon or within the Common Properties; (iii) zone, rezone, or seek and obtain variances or permits of any kind or nature whatsoever upon or within the Common Properties; (iv) replat or redesign the shape or configuration of the Common Properties; and (v) seek and obtain any and all permits, licenses or exemptions from any and all governmental agencies exercising jurisdiction over the Common Properties and/or the uses or activities thereon.

Article IX

Miscellaneous

- 9.01 If any of the Covenants and Restrictions shall be invalid, which invalidity shall not be presumed until the same is determined by the judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any of the other Covenants and Restrictions, each of which shall remain in full force and effect. The right to enforce the remaining Covenants and Restrictions thereafter shall not be deemed waived.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

- 9.02 These restrictions are made for the mutual benefit of all persons acquiring property in the Subdivision and for the purpose of inducing them to acquire said property, and said restrictions are hereby made irrevocable and binding upon the said grantor, its successors and assigns, in favor of the purchaser or purchasers, their heirs and assigns, and each purchaser is granted the corresponding right and benefit to compel the observance of such covenants, restrictions, condition and easements herein enumerated, so long as they shall remain in effect.
- 9.03 The Covenants and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date that this Declaration is recorded in the Office of the County Clerk of Collin County, Texas, after which time these Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Members entitled to cast seventy percent (70%) of the votes of the Association, in the aggregate, regardless of class, has been recorded in the Office of the County Clerk of Collin County, Texas, agreeing to abolish or terminate these Covenants and Restrictions; provided, however, that no such agreements to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.
- 9.04 This Declaration may be amended, modified and/or changed upon the express written consent of at least seventy percent (70%) of a quorum of the outstanding votes of all Members of the Association, regardless of class. Any and all amendments to this Declaration, shall be recorded in the Office of the County Clerk of Collin County, Texas. The Declarant may execute and record amendments to this Declaration without such consent or approval if the amendment is for the purpose of correcting technical or typographical errors or for clarification only.
- 9.05 Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, or to recover damages, or to enforce any lien created by these Covenants and Restrictions; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 9.06 Invalidation of any one of these Covenants and Restrictions by judgment or court order shall in no wise affect any other provision of this Declaration or the remainder of these Covenants and Restrictions which shall remain in full force and effect. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Declaration a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- 9.07 The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

- 9.08 Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as an Owner on the records of the Association at the time of such mailing.
- 9.09 If a holder of a mortgage on a Lot shall notify the Association of its address and the identity of the Lot and Owner covered by and granting such mortgage, then such holder(s) shall be entitled to receive, written notification from the Association of any default by the respective Owner in the performance of such Owner's obligations as established by this Declaration.
- 9.10 Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Bylaws of the Association shall be determined by the Board of Directors, whose determination shall be final and binding upon all Owners.
- 9.11 If Declarant shall convey all of its right, title and interest in and to the Subdivision and assign all its rights, benefits and obligations as Declarant hereunder to any partnership, individual or individuals, corporation or corporations, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed as of the 19th day of February 1998.

MT. PROSPER, L.L.C.,
a Texas limited liability company

By: Michael R. Buster
Co-Managing Member

By: James G. Herblin
James G. Herblin
Co-Managing Member

AFTER RECORDING RETURN TO:

Mr. James G. Herblin
Mt. Prosper, L.L.C.
501 Elm Street
Suite 350
Dallas, Texas 75202

Declaration Of Covenants, Conditions And Restrictions For Wilson Creek Estates II, continued

THE STATE OF TEXAS §
 §
 COUNTY OF _____ §

THE STATE OF TEXAS §
 §
 COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 1998, by Michael R. Buster, as co-managing member of Mt. Prosper, L.L.C., a Texas limited liability company, on behalf of said company.

 Notary Public, State of Texas

My Commission Expires:

This instrument was acknowledged before me on the 19th day of FEBRUARY, 1998, by James G. Herblin, as co-managing member of Mt. Prosper, L.L.C., a Texas limited liability company, on behalf of said company.



Marsha E. Hullett
 Notary Public, State of Texas

My Commission Expires:

3-27-2001