

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

FOR

CLEAR CREEK TOWNHOMES

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

FOR

CLEAR CREEK TOWNHOMES

THIS DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_,  
1996, by GRADY COATES and BRIAN DURANT, hereinafter referred to as  
"Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of Clear Creek Townhomes, an  
Addition to the City of Weatherford, Parker County, Texas,  
according to the subdivision plat.

WHEREAS, Declarant desires to insure that the development and  
use of the Properties (hereinafter defined) will maximize the  
benefit of the unique, presently-existing topographical and  
aesthetic features offered by the Properties and to protect those  
qualities for all future property owners, and desires to establish  
and implement a system of covenants, conditions, restrictions,  
rules and regulations which are designed to take maximum advantage  
of the unique characteristics of the Properties while maintaining  
those same considerations for future generations and providing the  
framework that will support and enhance that quality of life and  
the security of that environment; and to this end, desires to  
subject the Properties to the covenants, conditions, restrictions,  
easements, charges and liens hereinafter set forth, to be binding  
upon each Owner of a Lot (as such terms are hereinafter defined);  
and



WHEREAS, Declarant desires to impose said covenants, conditions, restrictions, easements, charges and liens on the Properties and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the first class quality and distinction of the Properties; and

WHEREAS, Declarant has deemed it desirable, and in the best interest of the residents and Owners of the Properties, for the efficient preservation of the values and amenities in said community, to create an entity to which would be delegated and assigned the powers of maintaining and administering the Common Areas and certain other property and improvements, enforcing these restrictions, covenants, easements, charges and liens, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused to be incorporated CLEAR CREEK TOWNHOME ASSOCIATION, INC., a Texas non-profit corporation, and has designated it as such entity;

NOW, THEREFORE, Declarant hereby declares that the Properties are and shall be held transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to herein as the "Covenants, Conditions and Restrictions") hereinafter set forth. The covenants, conditions, restrictions, and easements hereinafter set forth are covenants running with the land at law as well as in equity, and shall constitute a general plan for the benefit of and enforceable by all present and future owners of all Lots in the

Properties and their heirs, legal representatives, successors and assigns, as well as by Declarant and the aforesaid CLEAR CREEK TOWNHOME ASSOCIATION, INC.

#### ARTICLE I.

##### DEFINITIONS

The following words, when used in this Declaration or any amendment thereof (unless the context shall otherwise clearly indicate or prohibit), shall have the following meanings:

- (a) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Corporation.
- (b) "Builder" shall mean any person or entity other than Declarant (whether one or more) which acquires a Lot for the purported purpose of building a structure thereon for occupancy, in whole or in part, by some other person or entity.
- (c) "Common Areas" shall mean and refer to all areas of the Properties which are so identified on the Plat or are intended to be devoted to the common use and enjoyment of the owners, including but not limited to the streets located within the Properties and the perimeter wall.
- (d) "Corporation" shall mean and refer to CLEAR CREEK TOWNHOMES ASSOCIATION, INC., a Texas non-profit corporation.
- (e) "Declarant" shall mean and refer to GRADY COATES and BRIAN DURANT, their successors and assigns who shall receive by written assignment all or a portion of GRADY COATES and BRIAN DURANT's rights hereunder as Declarant, any such successors or assigns also being herein sometimes referred to as "Successor Declarant". No person or entity merely purchasing one or more Lots from GRADY COATES and BRIAN DURANT in the ordinary course of business shall be considered as "Declarant".
- (f) "Lot" shall mean and refer to any one of the plots or tracts of land which is designated for separate ownership and numbered (or otherwise similarly identified) on the recorded subdivision maps or plats of the Properties



(including the Plat), as said recorded subdivision maps or plats may be amended from time to time. All plat references include allowances for errors in boundaries created by construction. It is the express intention of the recorded plat of these lots that the center line of the common wall be the dividing line for these lots.

- (g) "Member" shall mean and refer to each Owner of a Lot, as provided in Article III hereof.
- (h) "Owner" shall mean and refer to each and every person or business entity (whether one or more) who is a record owner of fee simple title to any Lot; however, the word "Owner" shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Lot as security merely for the performance of an obligation (specifically including, but not limited to, any mortgagee or trustee under a mortgage or deed of trust) unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any proceeding in lien thereof.
- (i) "Properties" shall mean and refer to the real property described hereinabove, any improvements thereto, and any additions thereto pursuant to Article II hereof.
- (j) "Unit" shall mean and refer to any building now or hereafter erected, constructed or situated upon any of the Lots in the Properties designed and intended for use and occupancy as a residence by a single family in conformity with the building restrictions set forth herein.

## ARTICLE II.

### ADDITIONS TO PROPERTIES

If Declarant at any time or times desires to add Supplemental Property to the scheme of this Declaration, it may do so by filing of record a Supplementary Declaration, which shall extend the scheme of Covenants, Conditions and Restrictions of this Declaration to such property. However, the Covenants, Conditions and Restrictions, as applied to the property which is so added, may be altered or modified by said Supplementary Declaration, which may contain additions, deletions and modifications from the Covenants,

Conditions and Restrictions as necessary to reflect the different character, if any, of the added properties.

### ARTICLE III.

#### MEMBERSHIP AND VOTING RIGHTS IN THE CORPORATION

Section 1. Membership. Every Owner of a Lot shall automatically be a Member of the Corporation and must remain a Member of the Corporation in good standing, for so long as such party remains an Owner.

Section 2. Voting Rights. The Corporation shall have two (2) classes of voting membership, Class A and Class B. Class A Members shall be entitled to one vote for each Lot owned, and the Class B Member shall be entitled to 400 votes for each Lot owned. The Class B membership shall cease and the Class B Member shall become a Class A Member upon the later to occur of the following:

- (a) when Declarant shall have conveyed (other than to a Successor Declarant) all of the Properties and the Supplementary Property; or
- (b) December 31, 2008.

From and after such conversion, all Members of the Corporation shall be Class A members and each Member shall thereupon be entitled to one (1) vote for each Lot owned. Notwithstanding the foregoing, an Owner who is a Class B Member may elect to become a Class A member at any time by written notice to the Corporation. When more than one person or entity has an ownership interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote [or 400 votes, in the case of

Revised - NY laws  
3.02 - Voting rights  
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a Class B Member] be cast with respect to such Lot. A person's or entity's membership in the Corporation shall terminate automatically whenever such person or entity ceases to be an Owner, but such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Corporation or this Declaration during the period of such ownership, or impair any rights or remedies which the Corporation, Declarant or any owner has with regard to such former Owner. Declarant, or any Successor Declarant, may retain the voting rights incident to any Lot it may convey to a Builder, until such time as such Lot is occupied by the Owner thereof or such owner's tenant.

Section 3. Quorum, Voting and Notice Requirements.

Members holding ten percent (10%) of the votes entitled to be cast, represented in person or by legitimate proxy, shall constitute a quorum. The vote of the majority of the votes entitled to be cast by the members present, or represented by legitimate proxy, at a meeting at which a quorum is present, shall be the act of the Members meeting, unless the vote of a greater number is required by law, this Declaration or the By-Laws of the Corporation. Notice requirements for all action to be taken by the Corporation shall be as set forth in its Articles of Incorporation and/or By-Laws, as the same may be amended from time to time.

## ARTICLE IV.

### PROPERTY RIGHTS

Section 1. Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, the following persons shall have a right and easement of use and enjoyment in and to the Common Areas and such easements shall be appurtenant to and shall pass with the title to every Lot:

- (a) Each Member and each individual in his family residing with him in his Unit; and
- (b) Each tenant (and each individual) in the family of such tenant residing with the tenant) who resides in a Unit owned by a Member;

provided, however, such easements shall not give such persons (excluding Declarant) the right to make alterations, additions or improvements to the Common Areas. Guests of Members and Members' tenants shall also have the right, on a temporary basis and subject to any rules or regulations from time to time established by the Board, to use the Common Areas.

Section 2. Title to the Common Areas. Declarant may retain the legal title to the Common Areas (subject to the easements set forth in Section 1 above) until such time as, in the opinion of Declarant, the Corporation is able to maintain the same, provided that Declarant hereby covenants for itself and its successors that it shall convey the Common Areas to the Corporation no later than the date set forth in Article III, Section 2, for the conversion of Class B membership to Class A Membership. Until title to the Common Areas is conveyed to the Corporation, Declarant 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 Weatherford) to encumber, mortgage, alter, improve, landscape and maintain the Common Areas. The Corporation will not hold title to any of the Common Areas until title thereto is transferred to the Corporation by Declarant as aforesaid, and no Member or Owner will theretofore have a direct or undivided ownership interest in the Common Areas. The Corporation shall bear the expense of taxes, insurance and maintenance with respect to the Common Areas, whether before or after legal title has been conveyed to the Corporation.

Section 3. Extent of Member's Easements. The rights and easements of use and enjoyment created hereby shall be subject to the following:

- (a) The right of the Board to prescribe reasonable rules and regulations governing the use, operation and maintenance of the Common Areas (including, by way of illustration, limiting the number of guests);
- (b) The right of the board, as provided in its Bylaws, to suspend the voting rights and/or enjoyment rights of any Member or any other person to use and enjoy any of the Common Areas (except as necessary to gain access to and from his Lot) for any period during which any assessment against a Lot owned by such Member remains unpaid, and for any period not to exceed thirty (30) days for an infraction of its then-existing rules and regulations (or such longer period as such infraction may continue).
- (c) The right of Declarant or the Corporation to place liens against all or any portion of the Common Areas to secure monies borrowed by the Declarant to develop and improve the Properties or Common Areas or by the Corporation to improve and/or maintain the Common Areas.
- (d) The right of the Corporation to enter into and execute contracts with any party (including without limitation the Declarant) for the purpose of providing maintenance or such other materials or services respecting the



Common Areas as the Board of Directors of the Corporation may deem consistent with the purposes of the Corporation and/or this Declaration;

- (e) Subject to the approval by written consent by the Members having at least three-fourths (3/4) of the outstanding votes of the Members of the Corporation then entitled to vote, the right of the Corporation to dedicate or transfer all or any part of the Common Areas which it then owns to any municipal corporation, public agency, government authority, or utility company for such purposes and upon such conditions as may be agreed to by such Members.

## ARTICLE V.

### COVENANTS AND ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot or Unit, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot) to pay to the Corporation (or to any entity or agency which may be designated by the Corporation to receive such monies):

- (a) regular monthly or other periodic assessments or charges ("Regular Assessments") for matters concerning the Properties including, but not limited to, those matters described in Section 2 of this Article V; (b) special group assessments ("Special Group Assessments") for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (c) special individual assessments ("Special Individual Assessments") levied against individual Lot Owners to reimburse the Corporation for

extra costs for maintenance, repairs, or other expenses caused by the willful or negligent acts of the individual Owner (or the tenants or guests of such Owner, the guests of any tenants of such Owner, or the licensees or invitees of any such Owner or tenant) or acts or conditions or invitees of any such Owner or tenant) or acts or conditions in violation of this Declaration and not caused by ordinary wear and tear, such assessments to be fixed, established and collected from time to time as hereinafter provided.

Section 2. Purposes of Assessments. The assessments levied by the Corporation shall be collected and used exclusively for the purpose of promoting the enjoyment and welfare of the residents of the Properties, and in particular (by way of example, and not limitation) for (a) the improvement and maintenance of the Common Areas and any facilities or improvements thereon and any related personal property and any facilities which are presently or shall in the future be dedicated to the public but which are not maintained by any public or municipal authority, (b) the payment of taxes on, and insurance in connection with, the Common Areas and any improvements or facilities thereon, (c) carrying out the duties, or exercising the powers of the Board of Directors of the Corporation as set forth in this Declaration; (d) carrying out the purposes of the Corporation as stated in its Articles of Incorporation; (e) for any matter or thing designated by the City of Weatherford in connection with any zoning, subdivision, platting, building or development requirement; (f) landscaping and



maintaining all or any portion of any area along public right-of-way adjacent to the Properties; (g) costs of any security guards or other security personnel, guard houses and related improvements located on or about the Properties or the Supplemental Property, and other costs of security and/or communications control; (h) any common satellite dish, television antenna, cable television, or similar system or apparatus; (i) maintenance and upkeep of all front yards and flower beds in front yards of the Units (including operation of automatic sprinkler systems for the Units; and (j) the services of a person or firm (including affiliates of Declarant, as long as any compensation to or contracts with such affiliates are fair and reasonable) to assist in the management of the Corporation or any of its affairs, to the extent deemed advisable by the Board, legal and accounting services, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Corporation, whether such personnel are employed directly by the Board or any such manager.

Section 3. Basis and Amount of Assessments. The Board shall set the amount of the Regular Assessment for each Lot, which may be revised by the Board at its discretion in conformity with Section 6 of this Article V, taking into consideration the then current maintenance costs and the future needs and obligation of the Corporation. All Regular and Special Group Assessments shall be set at a uniform rate per lot, except as may otherwise be expressly provided herein.



Section 4. Special Group Assessments. In addition to the Regular Assessments, the Corporation may levy in any calendar year one or more Special Group Assessments, applicable to that year only to be paid in the manner designated in the resolution authorizing such assessments, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of any capital improvement upon or part of the Common Areas or the perimeter wall, including the necessary fixtures and personal property related thereto, or any unusual or emergency matters; provided that any such assessments shall have the assent of the holders of at least two-thirds (2/3) of the votes of the Members of the Corporation then entitled to vote who are voting in person or by legitimate proxy at a meeting duly called for this purpose, as provided in Section 3 of Article III.

Section 5. Date of Commencement of Assessments; Due Dates. The Regular Assessments shall commence on the first day of such month as may be determined by the Board, and such Regular Assessments shall continue to be due and payable monthly, in advance, on the first day of each month. The due date or dates, if it is to be paid in installments, of any Special Group or Special Individual assessment shall be fixed in the resolution authorizing such assessment.

Section 6. Duties of the Board of Directors with Respect to Assessments.

- (a) In the event of a revision of the amount or rate of the Regular Assessment or establishment of a Special Group Assessment or Special Individual Assessment, the Board shall fix the amount of the assessment against each Lot

and the applicable due date(s) for each assessment at least fifteen (15) 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 Corporation and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be delivered or mailed to every owner subject thereto.

- (b) The Board shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Corporation, setting forth whether said assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

Section 7. Effect of Non-Payment of Assessment: the Personal Obligation of the Owner; the Lien and Remedies of the Corporation.

- (a) If any Regular, Special Group or Special Individual Assessment or any part thereof is not paid on the date(s) when due (being the date(s) specified pursuant to this Article V), then the unpaid amount of such assessment shall become delinquent and shall, together with interest thereon as hereinafter provided and costs of collection thereof, thereupon become a continuing debt and personal obligation of the non-paying Owner, secured by a continuing self-executing lien on the Lot of the non-paying Owner and any right, title or interest that the non-paying Owner may have in such Lot or in the Properties, which lien shall bind the then Owner, his heirs, executors, devisees, transferees, personal representatives, successors and assigns. The Corporation shall have the right to reject partial payment of any assessment and demand full payment thereof or the Corporation may accept such partial payment on account only without waiving any rights hereunder with regard to the remaining balance due. The personal obligation of the then Owner of any respective Lot to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. The lien for any unpaid assessments, however, shall be unaffected by any sale or assignment [other than a foreclosure sale (or deed in lieu thereof) upon a lien which is superior to the lien securing the unpaid assessments, whether by virtue of Article V, Section 13 hereof or otherwise] of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Areas or abandonment of his Lot.



- (b) If any assessment or part hereof is not fully paid within thirty (30) days after the due date, the unpaid amount of such assessment shall bear interest from the due date at the lesser of eighteen percent (18%) per annum or the maximum legal contract rate of interest, and the Corporation may, at its election, retain the service of an attorney for collection or to foreclose the lien against the property subject thereto or pursue any other remedy which the Corporation may have at law or in equity, and there shall be added to the amount of such unpaid assessment any and all collection costs incurred hereunder by the Corporation, including reasonable attorneys' fees and costs of suit.

Section 8. Exempt Property. The following property, otherwise subject to this Declaration, shall be exempted from the assessments, charges and liens created herein;

- (a) All properties dedicated to a governmental authority or to the public;
- (b) All Common Areas.

Section 9. Direction by Declarant. Notwithstanding anything in this Declaration to the contrary, until the later to occur of (a) December 31, 2006, or (b) such time as all of the Properties and Supplemental Property have been conveyed by Declarant (other than to a Successor Declarant), Declarant shall have the right to direct the Corporation to perform specific items of maintenance, in a time and manner satisfactory to Declarant and at the expense of the Corporation, with respect to the streets within the Properties and the other items described in subparagraphs (f) through (i) of Section 2 of this Article V, in the event any such items are in Declarant's opinion not being properly maintained.



Section 10. Subordination of the Liens to Mortgages.

The liens securing the various assessments provided for in this Article V shall be subordinate and inferior to the lien of any valid mortgage or deed of trust now or hereafter placed upon any Lot to secure or obtain purchase-money, development or improvement financing or refinancing by the Owner thereof; provided, however, that subordination shall apply only to the assessments which have become due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve any such Lot Owner of personal liability therefor, nor the new Owner thereof from liability for the amount of any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

ARTICLE VI.

GENERAL POWERS AND DUTIES OF BOARD  
OF DIRECTORS OF THE CORPORATION

Section 1. Disbursements. The Board, as it deems appropriate for the benefit of the Corporation, the Properties and the Owners, shall make disbursements for purposes set forth in Article V, Section 2 above, out of the funds derived from the assessments provided for in Article V, Section 1.

Section 2. Additional Rights Powers and Duties of the Board. The Board or any officer or agent of the Corporation designated by the Board (including without limitation the Declarant) shall have

the following additional rights, powers and duties in addition to those which may be provided by statute or under the Articles of Incorporation or By-Laws of the Corporation:

- (a) Once title has been conveyed to the Corporation, to execute all declarations of ownership for tax assessment purposes with regard to any of the Common Areas or other portions of the Properties owned by it;
- (b) To enter into agreements or contracts (including but not limited to any maintenance, reimbursement or indemnity agreements) with utility companies, water districts and other governmental authorities with respect to utility installation, consumption and service matters and other maintenance matters;
- (c) To borrow funds to pay costs of operation, which may be secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;
- (d) 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 Corporation.
- (e) To protect or defend the Common Areas and related appurtenances from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Corporation, and to provide adequate reserves for repairs and replacements of equipment and other property or items owned or maintained by the Corporation;
- (f) To make reasonable rules and regulations for the operation and use of the Common Areas and other portions of the Properties as specified herein and to repeal or amend them from time to time (without limiting the generality of the foregoing language, the rules and regulations may provide for limitations on use of all or any portion of the Common Areas by children, guests, or otherwise);
- (g) Pursuant to Article VII herein, to adjust the amount, collect, and use any insurance proceeds to repair damaged or replace lost property; and if proceeds are insufficient to repair damaged or replace lost property, to assess the Members in amounts sufficient to cover the deficiency;



- (h) To enforce the provisions of this Declaration and any rules and regulations made hereunder and to enjoin and seek damages from any Owner for violation of such provisions, rules or regulations;
- (i) To establish such committees with such delegated powers as the Board may deem necessary or appropriate to the fulfillment of its duties and the exercise of its powers hereunder; and
- (j) To obtain such fidelity bonds as the Board may deem necessary or appropriate.

Section 3. Liability Limitations. Neither any Member, director, or officer of the Corporation shall be personally liable for debts contracted for or otherwise incurred by the Corporation or for a tort of another Member, whether or not such other Member was acting on behalf of the Corporation or otherwise. Neither the Declarant, the Corporation, its directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same, nor for any personal injury, property damage or any other damages including, but not limited to, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

Section 4. Reserve Funds. The Board may establish reserve funds 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 herein are capital contributions and not net income to the Corporation.



## ARTICLE VII.

### INSURANCE; REPAIR AND RESTORATION

Section 1. Right to Purchase Insurance. The Corporation shall have the right and option to purchase, carry and maintain in force insurance for the interest of the Corporation, its Board of Directors, officers, agents, employees, and the Architectural Control Committee, in such amounts and with such endorsements and coverage as shall be considered by the Board to be reasonable and proper.

Section 2. Insurance Proceeds. The Corporation, through the Board, shall use any net insurance proceeds to satisfy any liability or to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance of proceeds of insurance paid to the Corporation which is remaining after satisfaction of such liability or satisfactory completion of repair and replacement shall be retained by the Corporation as a reserve fund for repair and replacement of the Common Areas and the satisfaction of the Corporation's other maintenance obligation hereunder.

Section 3. Insufficient Proceeds. If the insurance proceeds are insufficient to satisfy any liability or to repair or replace any loss or damage, the Board may levy a Special group Assessment or, if appropriate, a Special Individual Assessment, to cover the deficiency.

Section 4. Owner to Provide Insurance. The Owner is to maintain Fire and Casualty and General Liability Insurance coverage

for loss or damage by fire or other hazards, including but not limited to vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction of the individual unit from any such hazard.

*A* All such insurance coverage obtained by the Owner shall be written in the name of the Owner and shall designate the Association as the alternate payee or beneficiary of such insurance contract. The Owner shall annually file proof of insurance coverage with the Association.

The Association, subject to the rights of any lienholder, reserves the right, as alternate payee or beneficiary of the insurance contract to use the insurance proceeds to repair or reconstruct any damaged unit.

Section 5. Damage and Destruction. Immediately, but in no event later than thirty (30) days after the damage or destruction by fire or other casualty to all or any portion of the unit covered by insurance the Owner or his Agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction means repairing or restoring the property to substantially the same condition that existed prior to the fire or other casualty, as quickly as is feasible under the circumstances, but in no event shall the repair or reconstruction begin later than ninety (90) days after the damage or destruction. If the



Owner fails to discharge the duties enumerated in this Section the Association may proceed to file all appropriate claims and obtain estimates for the repair or reconstruction of the damaged or destroyed property and proceed with said repair or reconstruction.

Section 6. Duty of Owner. In the event of damage or destruction of the unit by fire or other casualty, it is the duty of the individual Owner to repair or reconstruct the damaged or destroyed property to substantially the same condition that existed prior to the damage or destruction, subject to the time periods specified in Section 5 of this Article.

#### ARTICLE VIII.

##### MAINTENANCE

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and grass areas, paving and other improvements situated on the Common Property. The Association shall maintain and keep in good repair all landscaping and grass areas within the boundaries of the front yards of the Units. The Association shall maintain and keep in good repair all paved or concrete walkways, driveways and parking areas, even though located partially or wholly within the boundaries of a Unit. The Association shall maintain and keep in good repair all water and sewer pipes or facilities which serve more than one (1) Unit, whether located within or without a Unit's

boundaries, including sprinkler systems for the front yards of all Units.

The Association shall provide exterior maintenance upon Unit improvements as follows: paint, stain, repair and replace roof surfaces and roof systems, chimney and all exterior building surfaces.

The Association shall have the right, but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

\* Section 2. Owner's Responsibility. Except as provided in Section 1, above, all maintenance of the Unit shall be the responsibility of the Owner thereof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, sewer or air conditioning pipes, lines, ducts, conduits or other apparatus serving only the Unit). Such maintenance shall be performed consistent with this Declaration. In the event that the Board of Directors of the Association determines that (a) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part,



then, the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Unit.

Section 3. Party Walls.

(a) General Rules of Law to Apply. Each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. It is the express intention of the recorded plat of these lots that the center line of the common wall be the dividing line for these lots.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

(c) Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall shall restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

#### ARTICLE IX.

#### AFFIRMATIVE, NEGATIVE AND PROTECTIVE RESTRICTIONS

#### AND COVENANTS; ARCHITECTURAL CONTROL COMMITTEE

Section 1. Residential Use Only. Each Lot and Unit shall be used exclusively for single-family residential purposes, and no Lot or Unit may be used for the engaging in or practice of any commerce, industry, business, trade or profession within the Properties, save and except (a) development, construction, sales and marketing activities by Declarant, (b) such activities as may



be approved by the Board and which do not violate any zoning or other ordinance of the City of Weatherford, (c) with the prior written authorization of the Architectural Control Committee hereinafter described ("Committee"), a Builder may conduct its sales and marketing program for the portion of the Properties owned by such Builder from any completed Unit owned by such Builder if so authorized for a period not to exceed six (6) months from the date of such authorization, which may be renewed for successive six (6) month periods at the discretion of the Committee, and (d) that Declarant or, if and to the extent approved by the Committee, a Builder may conduct its construction operations and activities on the Properties and, in connection therewith, do all things reasonably necessary or convenient in order to most expeditiously commence, continue and complete such construction operations, including but not limited to construction and maintenance of temporary buildings for storage of construction materials, equipment, and trailers and open storage of uncovered building materials, equipment and trailers [limited, however (as to Builders other than Declarant), to the period and the manner specifically authorized by the Committee]. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations and ordinances of the City of Weatherford, Texas, and any other governmental authority having jurisdiction over the Properties, any violation of which shall also constitute a violation hereof.

Section 2. Individual Units; Garages. Each residential structure erected or placed on any Lot shall be designed, intended and used as a residence for a single family only, and no residential structure shall be more than 45 feet in height from the lowest point where such structure meets the surface of the Lot to the peak of the roof without the prior written consent of the Committee, nor less than 1400 square feet of living space, exclusive of garages, porches, stoops or any other structures or improvements which are not part of the air-conditioned, interior living quarters of the residence.

No building or other structure shall be erected, altered, placed or permitted to remain on any Lot other than a single-family dwelling. No building or structure intended for or adapted to business purposes shall be erected, placed, permitted or maintained on such premises, or any part thereof, save and except those related to activities permitted in the preceding Section 1 of this Article VIII.

All residences shall be equipped with automatic door closing facilities for each garage, which shall be maintained by each Owner, and all garage doors facing an adjoining street shall be kept closed at all times (except as may be necessary for entry and exit of vehicles and persons).

Section 3. Construction Materials of Buildings. Each residential structure constructed or placed upon a Lot shall have an exterior which is constructed in its entirety of materials that conform in appearance to Units that are presently constructed on



the property at the time of this Declaration [the term "exterior" being deemed to include any walls or wall surfaces (except for architectural details and accent features such as doorways, windows, arches and entry ways) which may be visible to one or more other Owners or the general public], and all other materials and finishes used in connection with the construction of each building shall be subject to the approval of the Committee provided for in Section 13 hereinbelow; provided, however, notwithstanding the foregoing and in recognition of the continual developing nature of building products, materials and technology, the Committee may authorize and permit the selected use of other building materials if the same are aesthetically acceptable, in the judgment of the Committee, as to architectural detail, style, motif and accent.

Installation of all types of exterior items and surfaces such as address numbers of external ornamentation, lights, mail chutes, mail boxes, exterior paint or stain, shall be subject to the prior written approval of the Committee both as to design, materials and location. No solar energy devices, equipment or apparatus, including, but not limited to solar power panels, may be constructed or installed without the prior written authorization of the Committee.

Section 4. Construction and Landscaping. The Association shall provide for the care and maintenance of the Common Areas and all lawns, garden areas, and beds in the front of the individual units. Each unit may have and contain an underground water sprinkler system for the purpose of providing sufficient water to

the yard areas. The Association shall have the right to operate each sprinkler system for the yards of the Units, or require the unit Owner to do so, in conjunction with a common maintenance plan although the respective unit Owner shall bear all costs and expenses related to the installation of the sprinkler system as well as the water consumption arising from its operation. The Association will bear the cost of repairs to the sprinkler system made necessary by the negligence of employees, agents, or officers of the Association.

No Owner shall construct any retaining wall unless such retaining wall is deemed necessary and authorized by the Committee and any such wall shall be built in strict conformity with the instructions of the Committee. The location of any Unit [as well as any pools, pool houses and other structures (except such out-buildings as to which a variance is granted by the Committee) on a Lot must comply with any and all setback requirements (a) of the City of Weatherford, (b) reflected on the Plat. This Section 4 shall not be construed to limit in any way the scope of discretion or the powers herein or elsewhere accorded the Committee respecting approval of matters covered herein.

Section 5. Storage of Vehicles. Boats, buses, trailers, mobile homes, campmobiles, campers, and all other similar vehicles or items designated by the Board (other than conventional passenger automobiles and pick-up trucks) may be parked, maintained, stored or kept on any parcel of the Properties covered by these Covenants, Conditions and Restrictions only if such vehicles are not visible



to public view from any street or public or common area. Such vehicles may be housed completely in a garage so long as such vehicles are not visible to public view from any street or common area and otherwise in full compliance with any and all rules and regulations with respect thereto as may be promulgated by the Board and/or the Committee from time to time. Trucks with a cargo capacity of over one (1) ton shall not be kept overnight on the streets or other Common Areas or on the Lot of any Owner. No motor vehicles of any kind may be parked overnight on the common areas for more than three (3) consecutive nights without prior written permission of the Board.

Section 6. Antennas. No exterior antenna or other similar structure shall be constructed or erected on any Lot. Except with the prior written approval of the Board, (a) no antenna shall be used or kept on any Lot except for A.M., F.M., V.H.F. or U.H.F. reception, and (b) no satellite dish or similar apparatus shall be kept or erected on any lot without prior written permission of the Board.

Section 7. Fences; Signs. No fence, wall or hedge shall be erected, placed, altered (other than normal maintenance) or removed on or from any residential Lot without the prior written approval of the Committee. Any fence so approved shall be constructed of a material approved by the Committee of a height, length, depth, and placement to be determined by the Committee. No cyclone or other chain-link fence may be placed or erected upon any Lot or portion thereof. No fence or wall may be built nearer to any street than

the building setback line. No sign or signs shall be displayed to the public view on any part of the Properties without the prior written consent of the Board, except: (a) a dignified "For Sale" sign [of not more than three (3) square feet in size] may be utilized by the owner of the respective residential Lot, (b) signs may be temporarily [for a period not in excess of twelve (12) months with respect to any Lot] used by any Builder in the development and sale of any portion of the Properties owned by such Builder, provided not more than one sign per Lot may be so used and such sign may not exceed three (3) square feet in size, and (c) signs related to development, sale or marketing which are erected by or for Declarant shall be permitted. The Corporation or its designated agent shall have the right to remove and dispose of any prohibited sign, advertisement, billboard or advertising structure which is placed on any Lot or portion of the Properties, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal nor any liability for any accounting or other claim respecting the disposition thereof.

Section 8. Utilities. Except as to special street lighting or other aerial facilities which may be required by the City of Weatherford or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals, transformers and other surface installations necessary to maintain or operate appropriate



underground facilities) shall be erected or installed on the Properties, whether upon individual Lots, easements, streets, or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Properties, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility. All utility meters, equipment, air conditioning compressors, air conditioning and heating units and similar items must be visually screened and located in areas designated by the Committee.

Section 9. Temporary Structures. No temporary structure of any kind shall be erected or placed upon any Lot, save and except with the prior written authorization of the Committee, and then only in strict compliance with the terms of such authorization. However, Declarant may maintain temporary sales or construction offices, provided such sales or construction offices are removed within sixty (60) days after completion of sales or construction, as the case may be. In addition, Declarant may conduct its sales and marketing program for the Properties from any Unit owned by it and/or from temporary sales building(s) or trailers and Declarant may also conduct its construction and development operations and activities on the Properties and, in connection therewith, do all things reasonably necessary or convenient in order to most expeditiously commence, continue and complete such construction and development operations (specifically including, but limited to,

construction and maintenance of temporary buildings and trailers for storage of construction materials and equipment and open storage of uncovered building materials and equipment).

Section 10. Garbage and Trash Collection; Maintenance; Water and Sewer. No rubbish, trash or garbage may be dumped or stored on or in any Lot or any portion of the Common Areas (except at such times and in such manner as may be designated by the Committee or the Board). All trash receptacles shall be concealed from public view so as not to be visible from any immediately fronting residential street, private drive, or adjacent Lot; provided, however, that trash containers may be placed at the curb at such times and in such manner as designated and authorized by the Corporation and all such trash receptacles shall be of a form and composition approved by the Board. Each Lot Owner shall observe and comply with any and all regulations or requirements promulgated by the Corporation in connection with the storage and removal of trash and garbage.

If, after ten (10) days prior written notice, an Owner shall fail to: (a) control weeds, grass and/or other unsightly growth; (b) remove trash, rubble, building and construction debris; or (c) exercise reasonable care to prevent or remedy an unclean, untidy or unsightly condition, then the Corporation shall have the authority and right to go onto said Lot for the purpose of mowing or cleaning said Lot or otherwise remedying the situation and shall have the authority to render a Special Individual Assessment (as hereinabove

provided) and collect from the Owner of said Lot the amount so expended by the Corporation.

All Units shall be connected to the water and sewage system of the City of Weatherford. No outside toilets will be permitted, except those approved by the Committee for use during construction. The drainage of any sewage into any road, ditch, surface easement, or water body, either directly or indirectly, is prohibited. Potable water shall be obtained from the City of Weatherford.

Section 11. Prohibited Acts and Activities. No noxious or offensive activity shall be conducted on any portion of the Properties that will adversely affect the peace, quiet, comfort or serenity of any other Owners. No Owner shall permit anything to be done or kept in his Unit, on his Lot or in the Common Areas, which would violate any applicable public law or zoning ordinance or which would result in the cancellation of, or increase the premium(s) for, any insurance carrier by the Corporation, or which would be in violation of any law or any rule or regulation promulgated by the Board. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in or on the Common Areas, nor shall anything be altered, or constructed or placed in or on the Common Areas, without the prior written consent of the Committee or the Board.

No animals, livestock or poultry shall be raised, bred or kept in any portion of a Lot, the Common Areas or the Properties, save and except that dogs, cats or other household pets not to exceed 10 pounds may be kept in a Unit.



No septic tanks or wells may be placed or operated upon any Lot, except water wells for irrigation purposes which have been approved in writing by the Committee.

Section 12. Damages; Use of Common Areas; Rules and Regulations. Each Owner shall be liable to the Corporation for any damage to any part of the Properties owned or maintained by the Corporation caused by the negligence or willful misconduct of the Owner, his tenant, or either of their families, guests or invitees, to the extent that the damage shall not be recovered by insurance.

Use of the Common Areas shall be limited to Owners, permitted tenants and guests in accordance with the provisions of Article IV, Section 1 hereof. All Owners, tenants, guests 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 any party who has violated said rules and regulations shall be liable to the Corporation for all damages and costs, including reasonable attorneys' fees.

Section 13. Architectural Control Committee. Following the date of recordation of this Declaration, the Architectural Control Committee (herein sometimes called the "Committee") shall be composed of one or more individuals or business entities appointed by Declarant, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Properties, who shall serve for a tenure at the pleasure

of Declarant. The Committee shall initially consist of GRADY COATES. The Committee shall function as the representative of Declarant and the Owners of the Lots for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity, throughout the Properties.

In the event of the death or resignation of any member of the Committee, the Declarant shall designate and appoint a successor. No member of the Committee acting in good faith shall be liable for claims, causes of action or damages arising out of services performed pursuant to this Declaration, and the Corporation shall indemnify and defend the Committee and the members of the Committee against any such claims, demands, causes of action and liabilities, and any expenses relating to any such claims, demands, and causes of action (including but not limited to reasonable attorneys' fees).

No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered (including, but not limited to, alterations of the exterior and facade of any Unit or the appearance or design thereof, such as changes or alterations of the color or appearance or composition of exterior materials) on any Lot until all plans and specifications and a plot plan have been submitted to and approved in writing (sometimes hereinafter



termed the "Building Permit") by the Committee (acting by a majority of its members, as to:

- (a) Quality of workmanship and materials; adequacy of its dimensions, adequacy of structural design; proper facing of main elevation with respect to nearby streets;
- (b) Conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (c) Location with respect to topography and finished grade elevation and effect of the location and use of any structure or improvement on neighboring Lots and improvements situated thereon and drainage arrangement; and
- (d) The other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins or regulations promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and/or decision.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Lot Owners or the general value of the Properties or the intent or purposes of this Declaration.

Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to require the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Lot Owner or his designated representative, if found not to be in compliance with these Covenants, Conditions and



Restrictions or if otherwise found unacceptable to the Committee, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a statement of items found unsatisfactory. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, as required herein, shall be in writing.

Notwithstanding anything herein contained to the contrary, if the Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date of submission, approval of the matters submitted will not be required and the approval of the Committee shall be presumed. The failure to receive written approval of plans and specifications shall not, under any circumstances, relieve any party from compliance with these Covenants, Conditions and Restrictions.

#### ARTICLE X.

##### EASEMENTS

Section 1. Easements Reserved by Declarant. Easements for installation, maintenance, repair and removal of utilities and drainage facilities are reserved by Declarant for itself, its successors and assigns, over, under and across the portion of the Properties (if any) designated on the Plat and over, under and across the Common Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies or to the City of Weatherford or to the Corporation. Nothing in this paragraph shall

be deemed to relieve any of the Owners from any of its maintenance responsibilities under this Declaration.

Section 2. Easement Reserved for the Corporation. Full rights of ingress and egress shall be had by the Corporation at all times over and upon the Properties for the performance of its rights, functions, duties and obligations hereunder; provided, however, that any such entry by the Corporation upon any lot shall be made with as minimum inconvenience to the Owner as practical.

#### ARTICLE XI.

##### GENERAL PROVISIONS

Section 1. Binding Effect and Duration. The Covenants, Conditions and Restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Corporation, Declarant and any Owner, and their respective legal representatives (including trustees), heirs, successors and assigns, for a term ending on December 31, 2038, after which time said Covenants, Conditions and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument agreeing to abolish these Covenants, Conditions and Restrictions has been signed by the Members then entitled to cast two-thirds (2/3) of the votes of the Corporation and recorded in the Deed Records of Parker County, Texas, on or before the expiration of the initial term or preceding extended term, as the case may be.

Section 2. Amendment or Termination. These Covenants, Conditions and Restrictions may be amended or terminated with the



written consent of the Members then entitled to cast at least two-thirds (2/3) of the votes of the Corporation by filing such amendment or termination for record in the Deed Records of Parker County, Texas, provided that Declarant must consent thereto if such amendment or termination is to be effective prior to the later of December 31, 2008 or the conveyance of the Properties and the Supplemental Property by Declarant (other than to a Successor Declarant).

Section 3. Attorney's Fees. In the event of any litigation commenced by or against Declarant or any other Owner pursuant to or with respect to this Declaration, the prevailing party shall be entitled to recover reasonable attorney's fees.

Section 4. Notices. Any notice, request, demand, instruction or other communication to be given to any Owner of any Lot hereunder shall be in writing and shall be deemed to be delivered upon receipt, if hand delivered, or upon deposit in the U.S. Mail, postage prepaid, addressed to such owner (or the person who appears as Member or Owner in the records of the Corporation at the time of such notice) at the last known address as reflected on the records of the Corporation at the time of such mailing.

Section 5. Headings, Captions and Gender. All article, section and paragraph headings and captions herein contained are for purposes of identification only and shall not be considered in construing this Declaration, and any gender used herein shall include every other gender.

Section 6. Partial Invalidity. If any term, provision, covenant, condition or restriction contained herein is invalid, illegal, or unenforceable under present or future laws during the term hereof, then and in that event, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 7. Joinder of Lienholders. First National Bank of Weatherford, lienholder with respect to the Property has joined in the execution of this Declaration for the purpose of consenting to, and making its lien subject to the terms and provisions hereof. However, this paragraph shall not be deemed to (a) abrogate the provisions of Article V, Section 10 hereof, or (b) imply any consent or subordination by any lienholders to the terms of any Supplementary Declaration pursuant to Article II hereof.

IN WITNESS HEREOF, GRADY COATES and BRIAN DURANT, as Declarant herein, in the above described lienholder have caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
GRADY COATES

\_\_\_\_\_  
BRIAN DURANT

FIRST NATIONAL BANK

By: \_\_\_\_\_