

Denton County
Cynthia Mitchell
County Clerk
Denton, TX 76202



70 2006 00077167

Instrument Number: 2006-77167

Recorded On: June 27, 2006 As
Restrictions

Parties: BELLE CREEK VILLAGE

To

Billable Pages: 25
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Comment:

**** Examined and Charged as Follows: ****

Restrictions	112.00
Total Recording:	112.00

112.00
112.00

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law

File Information:

Document Number: 2006-77167
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Record and Return To:

MORRISON AND COX
101 W RANDOL MILL RD STE 130
ARLINGTON TX 76011

User / Station: J Morris - Cash Station 1



THE STATE OF TEXAS }
COUNTY OF DENTON }

I hereby certify that this instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas

Cynthia Mitchell

County Clerk
Denton County, Texas

112.00
112.00

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BELLE CREEK VILLAGE

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BELLE CREEK VILLAGE is made and entered into by Opela Partners, L.P., a Texas limited partnership ("Opela").

RECITALS

A. Opela is the owner of that certain real property. (the "Property") located in Denton County, Texas, which is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference for all purposes.

B. Opela desires to amend and restate certain covenants, conditions and restrictions upon the Property previously recorded in County Clerk Document Number 2005-57075 of the Official Real Property Records of Denton County, Texas. The previous restrictions are deleted in their entirety and are replaced by this document.

C. Opela desires to provide for a flexible and reasonable scheme for the overall development of the Property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Opela further wishes to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of residential lots in said subdivision.

NOW, THEREFORE, Opela does hereby adopt, establish and impose the following covenants, conditions and restrictions upon the Property and all lots within the Property, and all additional property which may hereafter be added and/or subjected to the provisions of this Declaration which shall constitute covenants running with the land as to such Property. Opela hereby declares that the Property and any additional property that may subsequently be added to and subjected to this Declaration shall be held, transferred, sold, conveyed, leased, occupied and used subject to the following restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the Property, shall run with the real property subjected to this Declaration, and shall be binding on all parties having or acquiring any right, title, or interest in the described Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

The following words shall have the following meanings for purposes of this Declaration:

1. Subdivision: the Property, known as Belle Creek Village, Town of Flower Mound, Denton County, Texas.
2. Association: the nonprofit corporation created or to be created under the laws of the State of Texas, under the name Belle Creek Village Homeowners Association or such other name as selected by Declarant or Declarant's successors.
3. Town: the Town of Flower Mound, Texas.

4. Committee: the members and their successors of the Architectural Control Committee established by this Declaration.

5. Common Area: All real property owned in fee by the Association for the exclusive common use and enjoyment of the Owners, including areas designated by Declarant to be conveyed by deed to the Association.

6. Declarant: Opela Partners, L.P., and its successors and assigns. Conveyance by Declarant to a related entity shall transfer rights of Declarant. A related entity of Declarant is any entity in which Declarant, or the owners of Declarant, own collectively 20% of the ownership interest of such related entity.

7. Declaration: this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Belle Creek Village, and all amendments and supplements thereto filed for record.

8. Lot: any plot or tract of land shown upon the Plat which is designated as a single family residential lot.

9. Owner: every person or entity who is a record owner of a fee or undivided fee interest in any Lot, including contract sellers. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

10. Plat: the final plat of Belle Creek Village, a subdivision of Flower Mound, Texas, to be recorded, or as recorded, in the Plat Records of Denton County, Texas, pertaining to the Property, as supplemented or amended.

11. Property: all such existing properties, and additions thereof, as are subject to this Declaration as described on Exhibit "A" and any supplemental declaration prepared and filed for record.

12. Restrictions: the covenants, conditions, dedications, reservations, limitations, easements, and restrictions set forth in the Declaration or in the Plat.

ARTICLE II

PROPERTY; PLAT; CONDEMNATION

Section 1. Incorporation of Plat. The Plat dedicates certain streets and easements shown on the Plat, and establishes certain Restrictions applicable to the Property. All Restrictions shown on the Plat, to the extent they apply to the Property, are incorporated in and made a part of this Declaration as if fully set forth in this Declaration, and shall be construed as being adopted in each contract and deed of conveyance executed or to be executed by or on behalf of Declarant conveying any portion of the Property. The terms of this paragraph shall be understood to apply to any land which may hereafter be made subject to this Declaration and the jurisdiction of the Association, although such additional land will not be shown on the Plat.

Section 2. Condemnation. If all or any part of the Common Area is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall represent the interests of the Owners and the Association. The Association shall give timely written notice of the existence of such proceedings to all Owners and to all holders of first mortgages known to the Association by

notice to the Association to have an interest in any property subject to assessment. The expense of such proceedings shall be paid for out of assessments and charges collected pursuant to Article III of this Declaration. The Association is authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses, and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings.

If an action in eminent domain is threatened or brought against all or a portion of the Common Area, the Association, in addition to its general powers, shall have the sole authority to determine whether to defend or resist any such proceeding; to make any settlement of such proceeding; or to convey such portion of the Property to the condemning authority in lieu of such proceeding. With respect to any taking; all damages and awards shall be determined for the taking as a whole and not for each Owner's interest in the portion sought to be condemned. After the damages or awards for the taking are determined, the damages or awards shall be paid to the account of the Association. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to replace or restore, as far as possible, the Common Area so taken or damaged. If it is determined that such Common Area should be replaced or restored by obtaining other land, this Declaration shall be duly amended by instrument executed by the Association.

Section 3. Addition to the Property. Additional land may be annexed into the Association and made subject to this Declaration by Declarant without consent of the Owners within five (5) years of the date of this Declaration provided that a Declarant is the record owner of at least one (1) Lot. Addition or annexation by Declarant shall be accomplished by execution by Declarant and filing for record an instrument describing the land added or annexed. Additional land may also be annexed into the Association and made subject to this Declaration by a two-thirds (2/3) majority of the votes in the Association and upon the Association filing for record an instrument describing the land added or annexed and certifying the vote in favor of the annexation.

Section 4. Deannexation of Land from the Association. Land previously added or annexed into the Association and made subject to this Declaration may be deannexed by an instrument signed and acknowledged on behalf of not less than two-thirds (2/3) the votes in the Association and filed in the Real Property records of Denton County, Texas. Upon deannexation, the land deannexed shall no longer be subject to this Declaration or the jurisdiction of the Association.

ARTICLE III **BELLE CREEK VILLAGE HOMEOWNERS' ASSOCIATION**

Section 1. Membership. Every Owner of a Lot, whether one Owner or multiple Owners, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The membership of a person shall terminate automatically whenever the person ceases to be an Owner, except the termination shall not release or relieve the person from any liability or obligation arising under this Declaration during the period of ownership. Any transfer of title shall automatically transfer membership in the Association to the new Owner.

Section 2. Voting Rights. The Declarant shall exercise sole control of the Association until Declarant no longer owns any Lots or Declarant transfers control of the Association to the Owners, whichever occurs first. Declarant may transfer control of the

Association at any time by delivering to the Association and the Owners a written notice of transfer of control. Following any transfer of control, Owners shall be entitled to one vote for each Lot owned. If more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Multiple Owners may vote together or may, prior to the vote in question, make a written declaration or written agreement designating one person who is an Owner of the Lot to cast the vote for the Lot and provide such declaration or agreement to the Association.

Section 3. Members in Good Standing. Only "Members in Good Standing" are permitted to vote on Association matters. A Member in Good Standing is member who has paid all assessments and has no other obligation relating to the Lot outstanding, prior to the vote at issue.

Section 4. Bylaws. The Association may make whatever rules or bylaws it may choose to govern the organization; provided, such rules and bylaws are not in conflict with the terms and provisions of this Declaration.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment to the Common Areas and Association facilities, which shall be appurtenant to and shall pass with the title of every Lot, subject to the right of the Association to:

- a. establish operating procedures, rules, and regulations, and charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Area and regulate the time and circumstances for Owners' use of these facilities;
- b. limit the number of Owners' guests;
- c. suspend an Owner's voting rights and right to use the Common Area and Association's facilities during any period in which the Owner is in default in the payment of any assessment or charge levied by this Declaration and the Association and for any infraction of the Association's published rules and regulations; and
- d. dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for purposes and subject to conditions as may be approved by a two-thirds (2/3) majority of the votes in the Association. Dedication of public utility easements affecting the Common Area may, however, be approved solely by the Board.

Section 2. Delegation of Use. Any Owner may delegate the right of enjoyment to the Common Area and Association facilities to a family member, tenant, occupant, or contract purchaser if that person resides on the Property, or to a guest, but no transfer shall relieve the Owner of responsibility for the actions of persons to whom the right is transferred.

Section 3. Utility Easements. Easements for installation and maintenance of utilities and drainage are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or alter the direction or

amount of surface water or drainage channels. The easements of each Lot and any improvements in such easements shall be maintained by the Lot Owner, except for those improvements for which a utility company or public authority is responsible. Neither the Association nor a public utility shall be liable to an Owner for damage done by either of them or their agents or employees to plantings or improvements within, or encroaching upon, the easements.

Section 4. Access to Common Area. Each Owner grants the Association, Declarant and their agents full rights of ingress and agrees to maintain and use the Common Area.

Section 5. Title to the Common Property. The Association will hold record fee simple title to all Common Property, and all portions of the Property which are not within any of the Lots as shown on the Plat, all of which have been or will be dedicated to the Association as shown on, and pursuant to, the Plat, subject to the easements set forth in this Declaration or the Plat. Declarant or the Association shall have the right to execute any open space declarations applicable to the Common Property owned by, or dedicated to, the Association which may be permitted by law in order to reduce property taxes.

Section 6. Other Easements. Declarant and the Association shall have the right and easement to use the surface (and below the surface) of the easements or other Common Property for the purposes set forth on the Plat. In addition, the Association shall have an easement on each Lot for the purpose of erecting street lights or street signs, as well as for access to, and ingress and egress from, all Common Property for maintenance and other necessary or appropriate purposes. Any such entry by Declarant or the Association upon a Lot shall be made with as much minimum inconvenience to the affected Owner as practical.

Section 7. Maintenance of Common Area and Reserve Fund. The Association shall maintain the Common Area and shall perform, or cause to be performed, all operation, maintenance and supervision of the facilities and property constituting the Common Area. The Association's costs of maintaining the Common Area will be collected from the Owners through annual and/or special assessments. The annual assessment shall include an amount sufficient, in the Board's Discretion, to establish and maintain a reserve fund for the operation, supervision, and maintenance of the Common Area.

ARTICLE V ASSESSMENTS

Section 1. Covenant to Pay Assessments and Lien. The Declarant covenants, and each transferee and Owner, by acceptance of a deed for the property, whether or not expressed in the deed, is deemed to covenant, to pay to the Association:

- a. annual assessments;
- b. special assessments; and
- c. enforcement assessments.

The obligation to pay assessments, together with late charges and reasonable costs of collection, interest, court cost and reasonable attorney fees, shall be a charge upon the Lot and a continuing and contractual lien upon the Lot against which each assessment is made and

shall run with title to the Lot. Each assessment, together with interest, late charges and costs of collection, and reasonable attorney fees, shall also be the personal obligation of the Owner of the Lot at the time that the assessment became due.

Section 2. Purposes of Assessment. Assessments levied by the Association shall be used exclusively for the welfare and benefit of the Property and the Association, for such purposes as the Association may determine appropriate in accordance with its articles of incorporation and bylaws, including (but not limited to) installation, operation, repair, supervision, care and maintenance of the Common Area, including, if any, buildings, pools, parks, and landscape reserves conveyed to or owned by the Association; cleaning and lighting of alleys and streets; maintenance of the street rights-of-way adjacent to landscape reserves and esplanades within the rights-of-way; recreation; garbage and trash collection; police and security services; fire protection; taxes, utilities and insurance; mosquito and pest control; to provide a maintenance reserve fund; and other services, facilities, and activities as may be in the Association's interest as determined by the Board. Any service may either be provided by the Association, or the Association may contract with a third party for its provision.

Except for the Association's use of the assessments to perform duties described in this Declaration and in the bylaws, the use of the assessments is permissive and not mandatory. The judgment of the Board as to the expenditure of assessments shall be final and conclusive so long as its judgment is exercised in good faith. The judgment of the Board shall be deemed to have been given when approval of the expenditure is evidenced by a check signed by one or more of the directors or their designee by resolution of the Board.

Section 3. Payment and Rate of Annual Assessment. Assessments for a Lot shall commence on the date the Lot is first conveyed to an Owner by Declarant and shall be prorated for the first year, and are due and payable in advance. Until January 1 of the year following the date assessments commence, the maximum annual assessment shall be Three Hundred and No/100 Dollars (\$300.00) per Lot.

a. The Board shall determine annually whether the then current annual assessment is sufficient, insufficient, or excessive to meet the expenses and reserve requirements of the Association and, at a meeting of the Board called for such purpose at least thirty days in advance of the assessment period, may, by majority vote of the Board, increase or decrease the annual assessment up to an amount equal to 20% of the then current annual assessment.

b. The Board shall not change the amount of the annual assessment more than once in any calendar year. No increase shall be retroactive, but assessments may be utilized for costs incurred during a prior period. The annual assessment may be increased by an amount greater than 20% by approval of a two-thirds (2/3) majority vote of the votes of Members in Good Standing represented in person or by proxy at a meeting duly called for the purpose of considering a greater increase in annual assessment. The right to increase the annual assessment by a greater amount than provided in this Declaration shall not inure to the benefit of any third parties.

Section 4. Special Assessments. In addition to the annual assessments, the Association may, in any assessment year, levy one or more special assessments applicable to that year only, to defray, in whole or in part, costs for necessary purposes of the Association such as the construction, reconstruction, repair, or replacement of a landscape system, feature, element, or other capital improvement in the Common Area or on land subject to the

Association's jurisdiction; counsel fees and the fees of other retained experts; and similar costs that are necessary for the furtherance of the purposes of the Association. No special assessment shall be levied until it has been approved by a two-thirds (2/3) majority of the votes of Members in Good Standing represented in person or by proxy at a meeting duly called for the purpose of considering the levy of the special assessment. The right to levy special assessments shall not inure to the benefit of any third parties.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of raising the annual assessment by an amount that requires the vote of the Owners or of levying a special assessment shall be sent to all Owners neither less than thirty days nor more than sixty days in advance of the meeting. At the first meeting called, a quorum shall be sixty percent (60%) of the votes in the Association, represented in person or by proxy. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the previous meeting. This procedure may be repeated until a quorum is obtained. No subsequent meeting on which a quorum is obtained shall be held more than thirty (30) days following the preceding meeting.

Section 6. Determination and Notice of Annual Assessments. The Board shall fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period. Written notice of assessment shall be sent to every Owner, including the amount and due date.

Section 7. Rights of the Town. If the Association fails, after due notice from the Town, to maintain any landscape systems, features or elements in the Common Area in compliance with these Declarations or Town codes or regulations, the Town shall have the right to: (a) remove the landscape systems, features, or elements; and/or (b) assess the Association all costs incurred by the Town in performing such responsibilities; and/or (c) avail itself of any other enforcement action available to it pursuant to Texas law or Town codes or regulations.

The Association holds harmless and indemnifies the Town from any and all costs, expense, suits, demands, liabilities or damages, including attorney fees incurred or resulting from the taking of action pursuant to this Section.

Section 8. Enforcement Assessments. The Board may by majority vote assess any Lot or the Owner of the Lot those costs incurred by the Association in enforcing any provision of this Declaration or any right of the Association, to the extent that the Board has determined that the costs were necessary to enforce the Declaration and rights against the Lot so assessed. The Board shall give notice of each enforcement assessment to the Owner of the Lot. Each enforcement assessment shall be due and payable thirty (30) days from the date of the notice.

Section 9. Certificate of Paid Assessment. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

Section 10. Effect of Nonpayment of Assessment. Any assessment not paid within thirty (30) days after the due date shall bear interest calculated from the due date at the 10% per annum. The Association may file a notice of claim or lien in the Real Property Records of Denton County, Texas. The notice shall state the legal description of the property against which the claim or lien is made, the name of each Owner, the amount of the claim or lien, and the accrued late charges and costs of collection and shall be signed and acknowledged by an

officer of the Association. The claim or lien shall continue until the amounts claimed and all subsequently accruing amounts shall be fully paid or otherwise satisfied. When all claims have been satisfied, the Association shall execute and record a notice releasing the claim or lien and shall charge a reasonable fee for the preparation and recording of the release.

Section 11. Remedies and Liens. To enforce payment, the Association may bring an action at law against the Owner or Owners personally obligated to pay any assessment, or it may foreclose its lien against the property subject to the assessment. No Owner may waive or otherwise escape liability for an assessment by reason of abandonment of Lot, non-use of the Common Area or any other reason.

To secure payment of the assessments, Declarant reserves in favor of the Association, and shall reserve in each deed by which it conveys all property subject to assessment, and each Owner, by acceptance of the property, shall be deemed to have granted the Association, a vendor's lien and a continuing and contractual lien enforceable through judicial proceedings. THE LIEN MAY BE ENFORCED BY FORECLOSURE UPON DEFAULTING OWNER'S LOT BY THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN A LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH SECTION 51.002 OF THE TEXAS PROPERTY CODE, AS IT MAY BE REVISED OR AMENDED.

If any Owner fails to pay any assessment, the Association may, in addition to foreclosing its liens and exercising the remedies provided in this Declaration and upon ten days prior written notice to the nonpaying Owner, exercise any other rights and remedies available at law or in equity. The liens are assignable by the Association, in whole or in part.

Section 12. Subordination of the Lien to Mortgages. The assessment lien shall be subordinate to the lien of any first mortgage or deed of trust given by Owner for the purpose of purchase of the Lot or improvements on the Lot. Mortgagees shall not be required by this Declaration to collect assessments from Owners, and the failure to pay assessments shall not constitute a default under a mortgage. Foreclosure or any proceeding in lieu of foreclosure by the holder of a first mortgage shall extinguish assessments accrued prior to the foreclosure or proceeding in lieu of foreclosure.

Section 13. Exempt Properties. All property dedicated to and accepted by a political subdivision of the State of Texas or a municipal authority and all properties owned by charitable or non-profit organizations exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created by this Declaration, except that no property or improvements devoted to dwelling purposes shall be exempt from assessment. The Board may make other exceptions when, in its sole determination, the exemption of the property from assessment is in the best interest of the Association.

ARTICLE VI **ARCHITECTURAL CONTROL COMMITTEE**

Section 1. The Architectural Control Committee. Declarant shall appoint an initial Architectural Control Committee ("Committee") to consist of not fewer than three (3) persons. Declarant shall have the sole and exclusive right to appoint, remove and replace members of the Committee for so long as Declarant or Declarant's affiliates or assigns own at

least one (1) Lot. Thereafter, the members shall be appointed, removed or replaced by the Board.

Section 2. Purpose of the Committee. A function of the Committee is to review and approve or disapprove Plans for improvement proposed to be constructed or modified on Lots and otherwise perform the duties set forth in this Declaration. NO IMPROVEMENTS SHALL BE ERECTED, CONSTRUCTED, PLACED, ALTERED, REMODELED, DEMOLISHED OR PERMITTED TO REMAIN ON A LOT UNTIL PLANS IN SUCH FORM AND DETAIL AS THE COMMITTEE DEEM NECESSARY AND APPROVED BY IT IN WRITING. The vote of the majority of the members of the Committee shall be considered as the act of the Committee. The process of reviewing and approving Plans and specifications is one which, of necessity, requires the Committee from time to time to make subjective judgments on items for which specific standards or guidelines are not expressly set forth in this Declaration. The Committee is given full power and authority to make any such subjective judgments and to interpret the intent and provisions of this Declaration in such manner and with such results as the Committee, in its sole and exclusive discretion, may deem appropriate, and in the absence of final adjudication by a court of competent jurisdiction that the Committee has acted in an arbitrary and capricious manner and has abused its discretion, such action by the Committee shall be final and conclusive. Unless expressly stated otherwise herein, the Committee shall have the right to grant variances from the requirements of this Declaration as it, in its sole and exclusive judgment, deems appropriate. The Committee shall have the sole and exclusive discretion to determine whether Plans submitted to it for approval are acceptable, and the Committee, Declarant or the Association shall be entitled and empowered to enjoin or remove any construction undertaken pursuant to Plans of designs that have not been approved in writing by the Committee.

Section 3. Plans.

- a. An Owner desiring to construct or install any improvements on such Owner's Lot must submit to the Committee architectural, construction and/or design plans, in duplicate, for such improvements that contain sufficient detail and information to show the proposed improvement, elevations, materials, lot grading, colors, fencing, driveways, swimming pools, and such other information as requested by the Committee; provided the Committee may elect not to require certain information in specific circumstances (the "Plans").
- b. The Committee shall have the right to disapprove any submitted Plan not in compliance with this Declaration, if it is incomplete, or if the Committee determines that such Plan is deficient for any reason. The Committee may base its approval or disapproval on among other things:
 - (i) architectural character of all proposed improvements, taking into consideration the aesthetic quality of any structure with respect to height, form, siding, exterior materials and roofing materials (with regard to type, scale, texture, color and durability);
 - (ii) harmony of external design with improvements on other Lots;
 - (ii) relation of topography, grade and finish ground elevations to that of adjoining Lots and drainage functions;

- (iii) screening of mechanical and other installations;
 - (iv) extent and quality of landscaped areas; and
 - (v) compliance with the purpose and general plan and scheme of development and the intent and provisions of this Declaration.
- c. The Committee shall be available on a reasonable basis to meet with the Owner or such Owner's representatives to discuss and answer questions concerning proposed improvements and their compliance with this Declaration.
- d. If any submission of Plans is incomplete or does not include all data required by this Declaration, the Committee, within twenty-five (25) days after such submission, shall notify the Owner of such deficiencies, and such Plans should not be considered to have been submitted until such deficiencies have been corrected. If the Plans meet the approval of the Committee, one (1) set of Plans will be retained by the Committee and the other set of Plans will be marked "Approved" and returned to the Owner or such Owner's delegated representative, accompanied by a statement of complete approval or approval based on certain conditions. If the Plans are found not to be in compliance with the Declaration, one (1) set of such Plans shall be returned marked "disapproved," accompanied by a statement of the items found not to comply with this Declaration or not to be acceptable to the Committee. Any modification or change to the approved Plans must again be submitted to the Committee for its inspection, review and approval. If the Committee does not approve or disapprove properly submitted Plans within forty-five(45) days, the Plans are deemed approved.
- e. An Owner may prepare more detailed plans and specifications that do not vary from or modify the Plans which have been approved by the Committee. Improvements may be constructed or installed on a Lot only in conformance with such approved Plans beginning within six (6) months of approval. If work is not commenced within six (6) months from the date of the Committee approval of the Plans, then the approval given by the Committee pursuant to this Article shall be deemed revoked by the Committee, unless Committee extends in writing the time for commencing such work.
- f. Upon submission of a written narrative request for the same, the Committee may, from time to time, in its sole and exclusive discretion, permit Owners to construct, erect, or install improvements, which are in variance from this Declaration. In any case, however, such variances shall be in basic conformity with and shall blend effectively with, the general architectural style and design of the Subdivision. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests. The grant of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce this Declaration against any other Owner or against the same Owner for any other matter. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which variance is sought. Any grant of a variance by the Committee must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted. The failure of the Committee to

act on a variance request within any particular period of time shall not constitute the granting or approval of any such variance request.

- g. The Committee may from time to time publish, promulgate and amend architectural standards' bulletins. These bulletins may contain criteria mentioned elsewhere in this Declaration, or any other information which the Committee deems necessary or helpful to Owners in meeting the requirements of this Declaration.

Section 4. Inspections. The Committee, or its designees, shall have the right during reasonable business hours to enter upon and inspect any Lot or improvements then under construction and within twenty (20) days after completion of construction to determine whether or not the Plans have been followed as approved by the Committee. If the Committee shall determine that such plans have not been approved or that the Plans which have been so approved are not being substantially complied with, the Committee may, in its sole and exclusive discretion, give the Owner of such Lot and improvements written notice to such effect; and thereafter, the Board, Declarant, or the Committee, on behalf of the Association, shall be entitled to enjoin further construction and to require the removal or correction of any work in place that does not comply with the approved Plans. If any improvements shall be altered or replaced on any Lot otherwise than in substantial conformity with the approved Plans therefore, such action shall be deemed to have been undertaken without requisite approval of the Committee and to be in violation of this Declaration; and the Board, Declarant, or the Committee, on behalf of the Association, shall be entitled to take action as permitted under this Declaration with respect thereto.

Section 5. Interior Alterations. An Owner may make improvements and alterations within the interior of such Owner's residence without first obtaining the Committee's approval, provided such interior improvements and interior alterations do not change the exterior appearance of any improvements, including without limitation, window treatments, window location, window design or window materials.

Section 6. Limitation on Liability. Declarant, the Association, the Board (or any of its members), and the Committee (or any of its members) shall not, individually or in combination, be liable in damages (or otherwise) to any Person submitting plans or specifications for approval or to any Owner of any portion of the Property, by reason of subjective decisions, mistake in judgment, negligence or nonfeasance arising out of or in connection with, the approval or disapproval or failure to approve or disapprove any plans submitted; provided however, this provision does not apply to acts of willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or to any act expressly specified in the Association Documents as an act for which any limitation of liability set forth in the Association Documents is not applicable. Declarant, the Association, the Board (or any of its members), and the Committee (or any of its members) shall not, individually or in combination, be liable in damages (or otherwise) in connection with any construction, design, engineering or defect associated with any improvements (or otherwise) constructed on the Property. APPROVAL OF PLANS BY THE COMMITTEE DOES NOT CONSTITUTE ANY WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER THAT SUCH PLANS COMPLY WITH GOVERNMENTAL REQUIREMENTS OR GOOD AND PRUDENT DESIGN, ENGINEERING AND CONSTRUCTION PRACTICES. IT IS THE SOLE AND EXCLUSIVE RESPONSIBILITY OF THE OWNER TO DETERMINE WHETHER THE OWNER'S PLANS AND SPECIFICATIONS COMPLY WITH ALL SUCH REQUIREMENTS AND PRACTICES.

ARTICLE VII
PROTECTIVE COVENANTS

Section 1. General. No use shall be permitted on the Property which is not allowed under applicable governmental codes, ordinances and other laws either already adopted or as may be adopted by the Town or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, polices, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. IN SOME INSTANCES, GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NONCOMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL. All Lots shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided. The provisions of this Article set forth certain requirements which, in addition to the other provisions of this Declaration, shall apply with respect to the development and use of the Property.

Section 2. Single Family Residential Use. All Lots shall be used and occupied for single family residential purposes only. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than a private single-family detached residence unless approved in writing by the Committee. No mobile home, modular home, or manufactured home shall be placed on a Lot.

Section 3. Resubdivision / Zoning Changes. No Lot shall be resubdivided; provided however, that Declarant shall have, and reserves the right, at any time, and from time to time, upon the consent of the Town, and with the joinder of consent of the directly affected Lot Owners, to file a replat of the Plat to effect a resubdivision or reconfiguration of any Lots in the Property then owned by Declarant and the consenting Lot Owners, so long as such replat results in each resubdivided Lot containing not less than the minimum Lot size within the Subdivision prior to such replat. Owners of Lots not being replatted shall not unreasonably withhold or delay their joinder in or consent to such replat or amendments to the Plat as may be required by the Town. The right to replat set forth in this Section shall be exercisable only by Declarant. No Owner shall initiate or support any proposed zoning change affecting the Property or any portion thereof without first obtaining the prior written consent of Declarant (for as long as Declarant or Declarant's affiliates or successors own at least one (1) Lot).

Section 4. Combining Lots. Any person owning two (2) or more adjoining Lots, after first obtaining Declarant's prior written consent, may consolidate such Lots into a single building location for the purpose of constructing one (1) residential structure thereon and such

other improvements as are permitted herein; provided however, any such consolidation must comply with the rules, ordinances and regulations of the Town. In the event of any such consolidation, the consolidated building lot shall continue to be treated as two (2) or more Lots for purposes of applying the provisions of this Declaration. Nothing herein shall be construed to permit subdividing a lot or combining portions of Lots into a single building lot.

Section 5. Height Restriction. No building or structure on any Lot shall exceed two (2) stories in height unless approved in writing by the Committee.

Section 6. Minimum Floor Space. Each one-story dwelling constructed on any Lot shall contain a minimum of two thousand (2,000) square feet of air-conditioned floor area, exclusive of all porches, garages or breezeways, and, if a two-story or more dwelling, the first floor shall contain a minimum of one thousand five hundred (1,500) square feet of air-conditioned floor area, exclusive of all porches, garage or breezeways and the overall structure a minimum of two thousand five hundred (2,500) square feet of air conditioned space.

Section 7. Building Materials. The exterior walls of each building constructed or placed on a Lot shall be at least seventy-five percent (75%) brick, brick veneer, stone, or stone veneer. The exterior portion of any fireplace chimney shall be one hundred percent (100%) brick, stone or other material that is approved by the Town and approved in writing by the Committee. No brick, stone or other material used on the exterior of any building, outside walls, fence, walkway or other improvement or structure on any Lot shall be stained or painted without the prior written approval of the Committee. Notwithstanding the foregoing, outbuildings shall be constructed in design and materials, and screened, as approved in the discretion of the Committee which decision shall be governed, in part, by whether such outbuilding is visible from any adjoining street.

Section 8. No Commercial Activity. No business or commercial activity shall be conducted on any Lot which can be detected outside the residence. In this regard, any business activity causing traffic to and from a dwelling, parking on the street, or customers coming and going from the residence shall be a *prima facie* violation. On the other hand, activities conducted within the home calling for no customer traffic or which is not visible from the street or adjacent lots shall be permitted.

Section 9. Driveways / Sidewalks. Driveways must be paved by concrete or other material approved by the Committee. Each Lot Owner shall construct and maintain a sidewalk parallel to the front and, for corner Lots, parallel with each side street. The sidewalks shall be paved by concrete, or other materials approved by the Committee. Each sidewalk shall be a minimum of four (4) feet wide. All driveways and sidewalks shall conform to the requirements of the Town and shall be first approved in writing by the Committee.

Section 10. Garages. Each single-family residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) automobiles. Each garage shall open to the front, rear or side of the Lot. Location of the garage shall be subject to approval in writing by the Committee.

Section 11. Drainage.

- a. All Lots shall be graded so that no storm water drainage shall flow onto other Lots except as may be shown on the Plat.

- b. If Declarant installs special storm water drainage then, to the extent possible, drainage from roof downspouts and swimming pools shall be directed toward and shall tie into those special drainage facilities in a manner approved in writing by the Committee.
- c. Drainage pipes installed by or on behalf of an Owner shall be constructed with reinforced concrete with head walls of the same material as used in the construction of the residence to which they relate unless a variance is granted in writing by the Committee.
- d. Neither the Declarant nor Declarant's successors or assigns shall be liable for any loss of or damage done to, any shrubbery, grass, flowers, improvements, fences, sidewalks, driveways or buildings of any type or the contents thereof on any Lot, the streets or the Common Property caused by any water levels, rising water or drainage waters.

Section 12. Roofs. The use of various roofing materials within the Property shall be permitted including composition roofs rated for a minimum thirty (30) year life, provided however, no roofing material shall be installed, without first obtaining the Committee's prior written approval thereof. The roof pitch of any structure shall be a minimum of eight (8) feet by twelve (12) feet, unless otherwise approved in writing by the Committee.

Section 13. Exterior Surfaces. All siding must be painted or stained in a color compatible to the brick or stone and must be approved by the Committee.

Section 14 Building Lines/Setbacks/Sight Lines.

- a) All residences erected on any Lot shall face the street adjacent to the Lot as shown on the Plat or, with respect to corner Lots, as required in writing by the Committee. No portion of any such dwelling or residence shall be nearer to the front property line of said Lot than as designated on the Plat unless otherwise allowed by both the Town and the Committee.
- b) No structure or improvement of any kind (except for fences, as provided in Section 15 hereof) shall be nearer to the side property line or the rear property line of any Lot than as specified by the Town for side and rear yard setbacks applicable to the Property unless otherwise allowed by both the Town and the Committee.
- c) No fence, wall, hedging, shrubbery, improvement or planting shall be placed or permitted if it obstructs sight lines between two (2) and six (6) feet above grade within the triangular area formed within a corner Lot of twenty five (25) feet along adjacent streets from the intersecting corner of the streets. The same prohibition shall apply to the corner of an alley or driveway and a street.

Section 15. Fences.

- a) No fence, wall or hedges shall be erected, placed or altered on any Lot nearer to any Street than the minimum building setback line indicated on the Plat, unless allowed by the Town and approved in writing by the Committee.

- b) Fences, walls or hedges visible to the front and/or side streets including fences to the rear of the dwelling enclosing a formal backyard but not around the perimeter of the Lot (the "Privacy Fence") shall not be less than six (6) feet or exceed eight (8) feet in height unless otherwise specifically required by the Town and approved in writing by the Committee.
- c) No chain link fences or other wire type fences shall be erected on any Lot, except within a Privacy Fence and only if not visible from a Common area, an alley or any street.
- d) No requirement is made that fences, walls, or hedges be situated around the perimeter of the Lot (the "Lot Enclosure Fence"), but to the extent that a Lot Enclosure Fence is placed on the Lot it shall meet any requirements of this Declaration and the Town and be approved as to design and materials by the Committee.
- e) If a swimming pool is placed on any Lot it shall be fenced, to the extent required by, and in accordance with applicable Town requirements and shall have been approved in writing by the Committee.
- f) Except as provided in Subsection (h) hereof or unless otherwise approved in writing by the Committee, all Privacy Fences shall: (i) be of cedar wood or equivalent, and shall present a solid, board to board, facing (i.e., picket type fencing or other staggered spacing type fencing is not permitted); (ii) have a minimum height of six (6) feet and a maximum of eight (8) feet; (iii) not have any steel poles or posts visible from the ground level of any street, or adjoining Lot (provided, steel poles may be used provided they are boxed in with wood material similar to that used in the fence); (iv) have slats measuring between four (4) inches and six (6) inches wide which are installed vertically only (not horizontally or diagonally); (v) have an even flat top; and (vi) not be painted or stained on any surface which is visible from the ground level of any adjoining Lot; provided, however, a clear stain that does not conceal the grain of the wood may be used. Notwithstanding the above, wrought iron of a design and color approved in writing by the Committee may be allowed in lieu of the above required wood fencing in the discretion of the said Committee.
- g) Upon submission of a written request for same, the Committee, from time to time in its sole and exclusive discretion, may permit the construction of fences or walls which are in variance with the provisions of this Section where, in the sole and exclusive opinion of the Committee taking into account the view impact on the adjacent Lot or any other Lot directly affected thereby, the fence or wall is an integral part of the architectural style or design of the home.

Section 16. Signs. No signs shall be displayed to the Streets or otherwise to the public view on any Lot, except that:

- a. any builder, during the applicable initial construction and sales period, may utilize one (1) professional sign (of not more than nine

(9) square feet in size per Lot for advertising and sales purposes, provided that such sign first shall have been approved;

- b. a "for sale" or "for rent" sign (of not more than nine (9) square feet in size) may be utilized by the Owner of a Lot for the applicable sale or rent situation, provided that such sign shall have been approved in writing by the Committee;
- c. development related signs owned or erected by the Declarant shall be permitted;
- d. signs displaying the name of a security company shall be permitted, provided that such signs are (i) ground mounted; (ii) limited to two (2) in number per Lot (one (1) in the front yard and one (1) in the back yard) and (iii) of a size not in excess of two (2) square feet in size; and
- e. Political signs for candidates may be placed for two weeks prior to any election; provided, the sign may not exceed nine (9) square feet in size.

Section 17. Utilities. Each residence situated on a Lot shall be connected to the public water and sewer lines. Portable toilets will be allowed during building construction only. Propane, butane, LP Gas or other gas tanks, bottles or cylinder are allowed so long as they are not visible to adjoining properties or streets. Except as to street lighting (if any) installed by Declarant, all utilities service facilities (including, but not limited to water, gas, electricity and telephone) shall be buried underground (except meters, transformers, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities). All utility meters, equipment, air-conditioning compressors and similar items must be visually screened from view from any street by solid masonry of the type used in the dwelling, wood fencing in compliance with fencing restrictions or landscape shrubbery. Electric utility transformers may be installed only in locations designated on the Plat for such purpose or otherwise approved in writing by the Committee, and all improvements on a Lot on which an electric transformer pad easement is located as shown on the Plat must be installed in compliance with all electric company guidelines for separation from pad-mounted transformers.

Section 18. Temporary Structures. Except as specifically authorized elsewhere herein or authorized by the Committee for the specific purpose and under specific circumstances, no temporary structure of any kind shall be erected or placed upon any Lot.

Section 19. Construction Standards. Any builder constructing improvements on any Lot may conduct such builder's construction operations and activities and do all things reasonably necessary as required to expeditiously commence, continue and diligently complete construction any such improvements. All construction activities, temporary structures, storage of materials and equipment, all construction-related parking and temporary security fences shall be confined entirely on such Lot. Each Owner is responsible for making appropriate contractual provision with his builder, but shall remain responsible to the Association for all costs of cleaning up any debris or waste improperly disposed of or discarded anywhere on the Property relating to the construction of his residence. Each Owner and such Owner's contractors must maintain an attractive, clean, nuisance-free environment during the period of construction. Each Owner of a Lot on which improvements are being constructed shall keep all streets reasonably cleared

of mud and dirt left by construction vehicle for each Lot. Once commenced, all construction on a Lot shall continue with due diligence and good faith until completion.

Section 20. Vehicles. Any automobile, truck motorcycle, boat, boat trailer, camper top, mobile home, motor home campmobile, camper, motorcycle, boat, motorized vehicle or trailer shall be stored or placed in such a manner that the vehicle is not visible from any street from any Common Area, or from ground level view from an adjoining Lot. Trucks with tonnage in excess of one (1) ton shall not be permitted to park overnight on the streets, driveways or otherwise with the Property. No vehicle of any size which transports inflammatory or explosive cargo may be parked or stored within the Property at any time. On-Street parking is restricted to deliveries, pick-up or short-time guests and invitees and shall be subject to reasonable rules and regulations as shall be adopted from time to time by the Board. No Owners shall permit the accumulation of junk cars, junk vehicles, scrap metal, farm equipment, metal a stack yard or any substance on any part of the Property that could or would constitute a nuisance to the surrounding Lot Owners. No front or side lawn within the view from a street or Common Area shall be used for parking at any time

Section 21. Garbage/Weeds/Vegetation.

- a. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All garbage containers shall be placed where designated by the Town on the day of Collection. Such garbage shall not be placed in such location more than 12 hours ahead of scheduled pick up and the container shall be removed from such location within 12 hours after scheduled pick-up.
- b. If, at any time, and from time to time, an Owner shall fail to control weeds, grass or unsightly growth exceeding eight (8) inches in height, Declarant or the Board shall have the authority and right to go onto such Lot, or direct a third party service to go onto such Lot, for the purpose of mowing and cleaning such Lot and shall have the authority and right to asses and collect from the Owner of such Lot a sum not to exceed the greater or (i) the cost paid for such service, or (ii) the sum of One-Hundred and No/100 dollars (\$100.00) for any such mowing or cleaning. Any such assessments shall be enforcement assessments. It is understood that more than the actual cost, up to the maximum stated above may be charged to discourage repeated reliance on the Association to care for the Owner's Lot.
- c. No garden, except gardens consisting of flowers, shall be so located that the vegetation therein is visible from the street or from the ground floor level of any residence other than the residence of the owner of the garden.

Section 22. Animals/Pets. No animal, livestock or poultry of any kind shall be kept or raised on any Lot except dogs, cats, or other common household pets, provided they are not kept, board or maintained from commercial purposed and provided no more than two animals shall be kept. Notwithstanding the foregoing, no animal shall be kept which is a nuisance, is dangerous or is obnoxious to residents of the Property.

Section 23. Landscaping and Retaining Walls.

- a. Weather permitting, landscaping of a Lot must be completed within sixty (60) days after the date on which the residence is ninety-five (95%)

complete. The landscaping plan must be approved in writing by the Committee prior to any planting.

- b. Retaining walls may be installed to achieve even grades for pools, driveways or house foundations or to prevent storm water drainage from flowing onto other Lots as required elsewhere herein. Such retaining walls must be constructed of such materials, and be of a height, manner, location and design as approved in writing by the Committee. No railroad ties or landscape timbers shall be approved.

Section 24. Exterior Lighting. Exterior lighting shall be placed in such a manner as it is not directed toward a street or another Lot. Upon being given notice by the Committee that any exterior lighting is objectionable, as determined by the Committee in its sole and exclusive discretion, the Owner of the Lot on which same is located shall immediately remove any such lighting or shield the same in such a way that is no longer objectionable in the opinion of the Committee.

Section 25. Tennis Courts. Tennis courts shall not be permitted on any Lot without the prior written approval of the Committee. Such approval will include location with respect to other Lots, lighting, screening, and such other matters as the Committee shall deem appropriate to protect neighboring Lots from annoyance.

Section 26. Gazebos, Greenhouses and Storage Sheds. Gazebos, pool pavilions, trellises, green houses, children's playhouse, tree house, storage sheds or other similar structures may not be erected or placed on a Lot without the prior written approval of the Committee, except within a Privacy Fence only if not visible from any street, other Lot (at ground level) or Common Area. Approval shall include consideration of design, materials, location, screening and generally, the effect upon neighbors and the subdivision.

Section 27. Pools and Pool Equipment. No above-ground pools are permitted. All pools and pool service equipment shall be either screened with shrubbery or fenced and located in either (a) a side yard between the front and rear boundaries of the dwelling, or (b) the rear yard. The pool fencing shall comply with Town codes and be approved by the Committee.

Section 28. Mail Boxes. Road side mail boxes are required and shall be of the same material as the residence, or, in the alternative, or a cast iron construction approved by the Committee. The Committee may promulgate and publish criteria for mail boxes and adherence to such criteria shall be a condition of approval.

Section 29. Screening of Drying Clothes. The drying of clothes shall not be conducted where visible from a street, another Lot or the Common Area, and shall be permitted within a solid Privacy Fence.

Section 30. Removal of Dirt or Trees. Digging or removal of dirt is not permitted except in connection with construction or improvements on the Lots and subsequent landscaping and improvements (as approved by the Committee). No trees shall be removed unless to remove a diseased tree, a noxious tree, or a dead tree, as part of the construction process, or as part of a landscaping or improvement plan approved by the Committee.

Section 31. Maintenance. Each Owner shall maintain the exterior of improvements on the Lot and all landscaping and sprinkler systems in a safe, healthful, well-maintained, attractive, neat and orderly condition. All yard equipment, wood piles, and trash containers shall

be garaged or screened according to approval of the Committee. If an Owner fails to take any action required to correct maintenance violations within ten (10) days after written notice from the Association, the Association may elect, without liability to Owner, to enter the premises and do anything necessary in its opinion to secure compliance and charge the Owner an enforcement assessment of the cost to take such action plus Fifty Dollars (\$50.00).

Section 32. Offensive Conduct. No noxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance within the Property or any portion thereof. Loud, noisy, boisterous, drunken, or threatening conduct, on the part of any Owner, resident, or guest or vandalism, or trespassing on the Lot of another Owner, or reckless and dangerous operation of vehicles on the Streets of the subdivision, or any activities which injure or may injure persons or property, shall, without limitation, be defined as "offensive activity." Loud or offensive noises from sound systems, motorcycles or other vehicles, or barking dogs or other animals, also is defined as "offensive conduct."

Cumulative of the remedies provided elsewhere herein, upon a complaint from any Owner or resident, and after such investigation as the Board may deem appropriate, a written notice shall be sent by the Board (or its management agent or attorney) to the Owner of the Lot occupied by the person or persons violating this provision specifying the nature of the complaint and making formal demand that it cease. Should the conduct continue after such formal demand, the Owner shall be subject to a fine for each repeated violation of this provision of Fifty Dollars (\$50.00) per violation. Such fine shall be an enforcement assessment. There shall be no limit to the number or aggregate amount of such Violation Fines which may be assessed against an Owner for repeated violations of this provision.

Section 33. Antennae. Devices for transmitting or receiving radio, television, or other electronic signals, including satellite dishes, shall not be permitted on any portion of the Property unless located so as not to be visible from any street. If located on the roof, such device shall be located to the rear of the roof ridge line and/or gable of the main structure and shall not extend above the highest point of such structure. A satellite dish shall not be greater than six feet (6) in height, and shall be completely screened from public view by a fence that itself is in full conformity with this Declaration. An Owner may apply for a variance in the location of such devices, or for approval of other aerial devices such as electronic antenna, by submitting a plan showing the location, height, and type of materials to Declarant or the Committee, for approval.

Section 34. Roof Ventilators. All roof ventilators (other than ridge ventilators) shall be located to the rear of the roof ridge line and/or gable of any structure and shall not exceed above the highest point of such structure, so as not to be visible from any public street. The Committee may approve exceptions to this restriction when energy conservation and heating/cooling efficiency require ventilators that, because of a particular roof design, cannot be hidden from public view.

Section 35. No Drilling or Mining. No drilling, exploring, or mining operations of any kind shall be permitted on a Lot, and no derrick, structure or building designed for drilling or boring for oil, gas, or other minerals shall be erected or placed on a Lot.

Section 36. Hunting Prohibited. No hunting of any kind or character shall be allowed on the Property. No firearms shall be discharged on any Lot for any purpose.

Section 37. Repairs, Replacements and Modifications. The provisions of this Articles VII shall apply to any and all repairs, replacements or modifications of any improvements placed upon any Lot and shall not be deemed or construed as being limited to initial or new construction.

Section 38. Certain Declarant Uses. Notwithstanding anything herein to the contrary, Declarant may conduct Declarant's sales and marketing program for the Property from any permanent or temporary sales building or trailers and Declarant may conduct improvement work and activities on portions of the Property owned by Declarant or the Association and do all things reasonably necessary or convenient as required to expeditiously commence, continue, and complete such improvement work, including, but not limited to, the provision of temporary buildings [including without limitation, trailers], temporary storage of construction materials and equipment and the installation of temporary signage of such types, in such sizes and at such locations on portions of the Property owned by Declarant or the Association as Declarant deems appropriate.

ARTICLE VIII GENERAL PROVISIONS

Section 1. Binding Effect and Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, shall be binding on all Owners and shall inure to the benefit of and be enforceable by Declarant, the Association, legal representatives thereof and successors and assigns, and shall be and remain in effect for a period of twenty five (25) years from and after the date of the recording of this Declaration, after which time the Declaration shall automatically be extended for successive periods of ten (10) years, unless within six months prior to the end of the initial period or any extension at least seventy five percent (75%) of all Owners vote in favor of abolishing the Declaration, and an instrument is recorded executed and acknowledged by those Owners voting in favor of abolishing this Declaration and is recorded in the Real Property Records of Denton County, Texas; provided, neither Article IV, Section 7, Article V, Section 7, nor any other provision of these Declarations pertaining to the Association's obligations to operate, supervise, or maintain the Common Area shall be amended or terminated without the prior written consent of the Town.

Section 2. Amendments. Any provision hereof may be altered or amended as to any portion of the Property only by a document duly executed and acknowledged by Owners holding, in the aggregate, seventy five percent (75%) of the votes of all Members in Good Standing and the vote of the Declarant so long as the Declarant owns at least one Lot; provided, neither Article IV, Section 7, Article V, Section 7, nor any other provision of these Declarations pertaining to the Association's obligations to operate, supervise, or maintain the Common Area shall be amended or terminated without the prior written consent of the Town. Any amendment shall be effective only when the vote is conformed for each Member and a written instruction to such effect is recorded in the Real Property Records of Denton County, Texas. Notwithstanding the above, Declarant, without the joinder of any other party, shall have the sole and absolute right to make minor changes or amendments to this Declaration, as determined by Declarant from time to time, to correct or clarify errors, omissions, mistakes or ambiguities contained herein.

Notwithstanding anything herein to the contrary, Declarant shall have the right to include additional real property within the Subdivision and such additional property shall be subject to all covenants, conditions, restrictions, easements, liens and charges contained in this Declaration as provided in Article III, Section 3. Should Declarant elect to add property to this Declaration,

Declarant need only to record a Supplemental Declaration describing the additional property and stating that same is subject to the terms and provisions hereof.

Section 3. Enforcement. 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 failure by either Declarant, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Town of Flower Mound, Texas, is specifically authorized to enforce these covenants and restrictions in accordance with any (i) applicable state or local laws or ordinances (ii) the applicable provisions set forth within this Declaration. Declarant shall not be liable for any decision or action or failure to act under or pursuant to these covenants and restrictions.

Section 4. No Waiver or Obligation to Enforce. No delay or failure on the part of Declarant, the Association, or any Owner to invoke any available right, power or remedy with respect to a breach of this Declaration shall be held to be a waiver by that party (or stop that party from asserting) any right, power or remedy available to such party upon the recurrence or continuance of said breach or the occurrence of a different breach. Declarant and the Association, or its officers or Board, shall not be under any obligation to take any action to enforce the terms of this Declaration.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which remain in full force and effect.

Section 6. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning and interpretation of this Declaration.

Section 7. Notices of Owner. 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 Owner on the records of the Denton County Clerk.

Section 8. Notices to Mortgagees. Notwithstanding any provisions herein to the contrary, the holder(s) of a mortgage of a Lot is entitled to, and shall receive, written notification from Declarant of any default by the respective mortgagor or owner in the performance of such mortgagor's/Owner's obligation(s) as established by this Declaration.

Section 9. General. Notwithstanding any other provision hereof, Declarant reserves the right (upon application and request of the Owner of any Lot) to waive, vary or amend (by an appropriate letter to that effect addressed and delivered to such applicant Owner by Declarant) the application of any of these covenants and restrictions to such Lot if, in the sole discretion of the Declarant, such action be necessary to relieve hardship or permit good architectural planning to be effected.

Section 10. Texas Law. These Declarations shall be governed by and construed in accordance with Texas law.

Section 11. Approval by Town. By execution hereof, the Town confirms these Declarations meet all requirements for mandatory homeowners' association's declarations in the Town and all ordinances applicable to this Declaration are satisfied.

Section 12. Soil Movement. Each Owner acknowledges that the failure or excessive movement of any foundation of any Residence can result in the diminished value and overall desirability of the entire Property. Each Owner agrees and understands that the maintenance of the moisture content of the soils on each Lot is necessary to preserve the structural integrity of each Residence in the Property. Each Owner also acknowledges that the long term value and desirability of the Property is contingent upon each Owner maintaining its Residence so that no structural failure or excessive soil movement occurs within the Property.


EACH OWNER IS HEREBY NOTIFIED THAT THE SOIL COMPOSITION IN NORTH TEXAS IN GENERAL AND THE PROPERTY IN PARTICULAR AND THE CONDITION OF THE LOTS MAY RESULT IN THE SWELLING AND/OR CONTRACTION OF THE SOIL IN AND AROUND THE LOT IF THE OWNER OF THE LOT DOES NOT EXERCISE THE PROPER CARE AND MAINTENANCE OF THE SOIL REQUIRED TO PREVENT MOVEMENT.

If the Owner fails to exercise the necessary precautions, damage, settlement, movement or upheaval to the foundation and structural failure may occur. Owners are highly encouraged to install and maintain proper irrigation around their Residence or take such other measures to ensure even, proportional, and prudent watering around the foundation of the Residence.

By each Owner's acceptance of a deed to any Lot, each Owner, on behalf of Owner and Owner's representatives, successors and assigns, hereby acknowledges that Declarant and all Builders shall not be responsible or liable for, and Owner shall assume all risk and consequences of, any damage, settlement, movement or upheaval to the foundation, structural failure, or any damage to any other part of the Residence caused by Owner's failure to exercise proper care and maintenance of the soil required to prevent soil movement, and hereby releases and forever discharges, all Builders and Declarant and their respective shareholders, members, officers, directors, partners, employees, agents, representatives, affiliates, attorneys, successors and assigns, of and from any and all claim for the relief and causes of actions, liabilities, damages and claims whatsoever, known or unknown, direct or indirect, arising from or relating to Owner's failure to exercise proper care and maintenance of the soil required to prevent soil movement, including but not limited to, any damage caused by or related in any fashion to the failure or improper or uneven watering of the Lot, plating or improper vegetation near the foundation, or any action by any Owner that affects the drainage of any Lot.

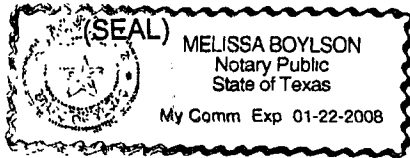
IN WITNESS WHEREOF, this instrument is executed effective as of the date first written above.

OPELA PARTNERS, LP

By: 
Its: Megan K. Kline

STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 26 day of June, 2006, by Tommy Goff, mng. partner of phetalarms, on behalf of said corporation.



[Handwritten Signature]
Notary Public in and for the State of Texas

For the Town of Flower Mound:

By: Douglas S. Powell
Its: Executive Director

STATE OF TEXAS §
 §
COUNTY OF Denton §

This instrument was acknowledged before me on the 27 day of June, 2006, by Douglas S. Powell of the Town of Flower Mound on behalf of said Town.

(SEAL)

[Handwritten Signature]
Notary Public in and for the State of Texas



EXHIBIT "A"

Belle Creek Village, A Subdivision to the Town of Flower Mound, Denton County, Texas, according to the Map and Plat thereof filed in Cabinet W, Page 787, of the Map and Plat Records of Denton County, Texas. Together with Certificate of Correction filed May 12, 2006, County Clerk Document Number 2006-17947, Real Property Records, Denton County, Texas.