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Unofficial Copy

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
MISTLETOE HILL**

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EXHIBITS

- Exhibit "A" Legal Description of Property Initially Submitted to this Declaration
- Exhibit "B" Site Plan Showing Property Subject to Later Annexation to this Declaration
- Exhibit "C" Initial Use Restrictions
- Exhibit "D" Rules of Arbitration
- Exhibit "E" By-Laws of the Association

STATE OF TEXAS

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COUNTY OF TARRANT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

MISTLETOE HILL

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "Declaration") is made this 9th day of February, 2004 (the "Effective Date"), by Mistletoe Hill, L.P., a Texas limited partnership (the "Declarant"). Declarant is the owner of the real property described in Exhibit "A" and depicted on Exhibit "B," which exhibits are attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties.

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Mistletoe Hill Homeowners' Association, Inc., as filed with the Secretary of State of the State of Texas.

1.3. "Association": Mistletoe Hill Homeowners' Association, Inc., a Texas non-profit corporation, its successors or assigns.

1.4. "Base Assessment": Assessments levied on all Units subject to assessment under Article X to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 10.1 and 10.3.

1.5. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Texas corporate law.

1.6. "Builder": Any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.7. "By-Laws": The By-Laws of Mistletoe Hill Homeowners' Association, Inc., attached as Exhibit "E," as they may be amended.

1.8. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors. The Class "B" Control Period ends when any one of the following occurs:

(a) three months after 95% of the maximum number of Units permitted by the Master Land Use Plan for the Properties have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders,

(b) that date which is forty (40) years after the Effective Date of this Declaration; or

(c) when, in its discretion, the Declarant declares such in a recorded instrument.

1.9. "Common Area": All real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.10. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Owners representing at least the Minimum Required Class "A" Vote.

1.11. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

1.12. "Declarant": Mistletoe Hill, L.P., a Texas limited partnership, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit "A" or Exhibit "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided there shall be only one Declarant at any time.

1.13. "Declaration": This Declaration of Covenants, Conditions and Restrictions.

1.14. "Design Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to Article XI of this Declaration.

1.15. "Governing Documents": The Governing Documents include the following documents, as each may be amended: the Declaration, any Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, the Initial Use Restrictions, and any resolutions or rules adopted by the Board.

1.16. "Initial Use Restrictions": The initial use restrictions and rules applicable to the Properties, as set forth in Exhibit "C" subject to, and as may be amended pursuant to Article XII of this Declaration.

1.17. "Master Land Use Plan": The land use plan for the development of the Mistletoe Hill community, as it may be amended from time to time, which plan includes the property described on Exhibit "A" and all or any portion of the property depicted on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Land Use Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property depicted on Exhibit "B" from the Master Land Use Plan bar its later annexation in accordance with Article IX.

1.18. "Member": A Person entitled to membership in the Association.

1.19. "Minimum Required Class "A" Vote": The lesser of (i) at least 67% of the Class "A" votes of Owners voting in person or by proxy at a duly called meeting, or (ii) Owners representing at least 50% of the Association's total Class "A" votes.

1.20. "Minimum Required Vote": The lesser of (i) at least 67% of the votes of Owners voting in person or by proxy at a duly called meeting, or (ii) Owners representing at least 50% of the Association's total votes.

1.21. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.22. "Mortgagee": A beneficiary or holder of a Mortgage.

1.23. "Mortgagor": Any Person who gives a Mortgage.

1.24. "New Construction Committee" or "NCC": Shall have that meaning specified in Section 11.2(a) of this Declaration.

1.25. "Owner" One or more Persons who hold the record title to any portion of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.26. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.27. "Properties": The real property described on Exhibit "A," together with such additional property which as of the date of determination has been subjected to this Declaration in accordance with Article IX.

1.28. "Public Records": The Public Real Estate Records of Tarrant County, Texas.

1.29. "Special Assessment": Assessments levied in accordance with Section 10.6.

1.30. "Specific Assessment": Assessments levied in accordance with Section 10.7.

1.31. "Supplemental Declaration": An instrument filed in the public records pursuant to Article IX which subjects additional property to this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.32. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are "under construction," the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Land Use Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph. The phrase "under construction," when used in this context, shall refer to the time period prior to the issuance of a certificate of occupancy for the structure comprising the residential single-family dwelling.

ARTICLE II
PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, Initial Use Restrictions, or rules of the Association after notice pursuant to the By-Laws;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7;
- (f) The right of the Declarant to dedicate or transfer all or any part of the Properties then owned by Declarant pursuant to Section 4.5 and Article XV;
- (g) The right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Area;
- (h) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board; and
- (i) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of Texas.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 hereof and in the By-Laws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one whole and undivided vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 10.12.

(b) Class "B". The sole Class "B" Member shall be the Declarant. During the Class "B" Control Period, the Class "B" Member shall have three (3) equal votes for each vote accorded to each Class "A" Member hereunder. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration and the By-Laws, are specified elsewhere in this Declaration and the By-Laws. The Class "B" Member may appoint at least a majority of the members of the Board of Directors during the Class "B" Control Period, as provided in the By-Laws.

During the Class "B" Control Period, the Class "B" Member, if any, shall have a right to disapprove actions, policies, or programs of the Association, the Board and any committee, as provided elsewhere herein and in the By-Laws.

The Class "B" membership shall terminate and become converted to Class "A" membership upon termination of the Class "B" Control Period, after which Declarant shall be entitled to one (1) equal vote for each Unit in which Declarant holds the interest required for membership under Section 3.2.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Owner of such Unit. The Class "B" Member, or its designee, may exercise all votes to which the Class "B" Member is entitled under this Declaration.

In any situation where a Member is entitled personally to exercise the vote for his Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it in a contradictory or unclear manner.

ARTICLE IV **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant or its designees may convey to the Association improved or unimproved real estate located within the Properties, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, the Initial Use Restrictions, or rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area; provided that any such sanctions are subject to disapproval by the Declarant for as long as Declarant owns any property described in Exhibit "A" or depicted on Exhibit "B". In addition, the Association, through the Board, in accordance with the By-Laws, may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration or the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including without limitation attorneys fees and court costs, reasonably incurred in such action from the violating Owner.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit the appropriate governmental entity to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4. Implied Rights, Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. For so long as the Declarant owns any property described on Exhibit "A" or depicted on Exhibit "B", the Declarant may designate sites within the Properties for fire, police, water, and other utility facilities, parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Area to the City of Burleson, Tarrant County, Texas, or to any other local, state, or federal governmental entity.

4.8. Monitoring Services. The Association may, but shall not be obligated to, maintain or support or contract for the provision of monitoring services within the Properties. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of safety within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate monitoring services or of ineffectiveness of any such measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other monitoring system or measure can not be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants, that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are

not insurers of safety and that each Person using the Properties assumes all risks of personal injury, death, and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Relations with Adjacent Properties. Adjacent to or in the vicinity of the Properties are independent commercial and/or residential areas. Declarant, during the Class "B" Control Period, or the Association may enter into agreements, contracts or covenants to share costs with all or any of the owners of such adjacent or nearby property which allocate access, maintenance responsibilities, expenses and other matters between the Association and such property owners.

ARTICLE V MAINTENANCE

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all landscaping and other flora, parks, lakes, structures, and improvements, including any private streets, bike and pedestrian pathways/trails, situated upon the Common Area;
- (b) landscaping within public rights-of-way within or abutting the Properties;
- (c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;
- (d) all ponds, streams and/or wetlands (if any) located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment (if any) installed therein or used in connection therewith; and
- (e) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.
- (f) all masonry fences and related landscaping constructed by Declarant or the Association as a buffer on lots with frontage along McAlister Road or Hemphill Drive.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibit "A" or depicted on Exhibit "B" of this Declaration.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its own maintenance responsibilities.

5.4. Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. 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.

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

(c) Damage and Destruction. If a party structure 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 is served by the structure may restore it. If other Owners thereafter are served by the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right 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.

(e) Disputes. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XVII.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements.

(ii) Commercial general liability policy on the Area of Common Responsibility, insuring the Declarant, the Association and its Members for damage or injury caused by the negligence of the Declarant, the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(iv) Directors and officers liability coverage, provided, however, the Association shall not be required to purchase such coverage if the directors and officers are otherwise covered by or through policies procured by Declarant or others;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on

hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and ordinance coverage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

(b) Policy Requirements. After expiration of the Class "B" Control Period, the Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Tarrant County, Texas area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 10.7.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Texas which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Declarant, the Association and its Members;

(iii) not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall be required to use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Declarant, the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless, within 90 days after the loss, (i) the Class "B" Member, if any, and (ii) Owners representing at least the Minimum Required Class "A" Vote, agree not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 90-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, including, but not limited to, payment to

any Mortgagee of the Common Area, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, and liability insurance. If, because the Owner fails or refuses to do so, the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners hereunder, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner thereof pursuant to Section 10.7.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. In the event the Owner fails or refuses to promptly repair or reconstruct, or to clear the Unit of all debris and ruins within 30 days of the event of damage or destruction, the Association may clear the Unit (but not repair or reconstruct) and assess all costs incurred against the Unit and the Owner in accordance with Section 10.7. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE VII **NO PARTITION**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

ARTICLE VIII **CONDEMNATION**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Owners representing at least the Minimum Required Class "A" Vote and of the Declarant, as long as the Declarant owns any of the Properties) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking (i) the Declarant, so long as the Declarant owns any of the Properties, and (ii) Owners representing at least the Minimum Required Class "A" Vote shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE IX

ANNEXATION AND WITHDRAWAL OF PROPERTY

9.1. Annexation Without Approval of Membership. Until all property depicted on Exhibit "B" has been subjected to this Declaration, or the date which is twenty-five (25) years after the Effective Date, whichever is earlier, the Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property depicted on Exhibit "B" or any real property located adjacent to, contiguous with, or nearby the Properties. Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit "A" or depicted on Exhibit "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the Public Records. Such Supplemental Declaration shall not require the consent of Owners, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing of record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property depicted on Exhibit "B"

9.2. Annexation With Approval of Membership. The Association may annex real property depicted on Exhibit "B" or any real property located adjacent to, contiguous with, or nearby the Properties after the date which is twenty-five (25) years after the Effective Date, with the consent of the owner of such property, the affirmative vote of Owners representing at least the Minimum Required Class "A" Vote, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.3. Withdrawal of Property. So long as it has a right to annex additional property pursuant to this Article IX, the Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association's reasonable written consent shall be required prior to such withdrawal.

9.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any Supplemental Declaration annexing additional property may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

9.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in Exhibit "A" or depicted on Exhibit "B."

ARTICLE X ASSESSMENTS

10.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Special Assessments as described in Section 10.6; and (c) Specific Assessments as described in Section 10.7. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at a rate equal to the highest rate allowed by applicable law) computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 10.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, other than a transfer by Mortgage to a Mortgagee, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit pursuant to the power of sale or foreclosure rights contained in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Board shall, upon at least seven (7) days' prior written request, furnish to any contract purchaser of a Unit or any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in annual, semi-annual, or monthly installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance in two equal semi-annual installments on each January 1 and July 1. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

10.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold Units, notwithstanding the commencement date for assessments set forth in Section 10.9, or to pay the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. To the extent that Declarant contributes payments beyond that which would be required if Declarant elected to pay regular assessments, such amounts shall be treated as a loan to the Association. The terms of such loan shall include interest at the rate of 10% per annum, and payment in full shall be due upon demand at any time after one year following the termination of the Class "B" Control Period. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

10.3. Computation of Base Assessment. At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.5. The initial budget may be adopted by the Board at any time that the Board deems such action necessary.

The Base Assessment shall be levied equally against all Units; provided, however, commencing as described in Section 10.9, for a period of one year, Units owned by Builders shall be assessed at one-fourth (1/4) of the Base Assessment rate levied on Units not owned by

Builders. Following the expiration of said one year period, Units owned by Builders shall be assessed at the full Base Assessment rate established for all other Units.

The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 10.9 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 10.2), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to be delivered to each Owner prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.4. Intentionally Deleted.

10.5. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget with respect to amount and timing by annual Base Assessments over the budget period.

10.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessments shall be levied against the entire membership. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least

the Minimum Required Class "A" Vote, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

10.7. Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within the Properties that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit; (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests, or (c) that are expressly permitted by the terms of the Declaration. The Association may also levy a Specific Assessment against any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, other covenants, the Articles, the By-Laws, the Initial Use Restrictions, and rules, provided the Board gives prior notice to the Unit Owner and an opportunity for a hearing. So long as it owns any part of the Properties, the Declarant may disapprove any Specific Assessment levied pursuant to this section.

10.8. Lien for Assessments. The Declarant does hereby establish, reserve, create and subject each Unit to a perfected contractual lien in favor of the Association to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Texas law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Declarant hereby assigns such lien to the Association without recourse. The lien shall be self operative, and shall continue in inchoate form without being reserved or referenced in any deed or other documents and without any other action required. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure in accordance with Texas law. Subject to approval by the Class "B" Member, the Association may assign such lien rights as to any or all Units to a lender as security for any loan made to the Association.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with TEX. PROP. CODE ANN. § 51.002 and Chapter 209 (Vernon 2003), as they may be amended, in like manner of any deed of trust on real property.

Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with TEX. PROP. CODE ANN. § 51.002 and Chapter 209 (Vernon 2003), as they may be amended. At any foreclosure proceeding, any Person, including but not limited to Declarant, the Association, and any Owner shall have the right to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is

owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 10.9, including such acquirer, its successors and assigns.

10.9. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit owned by Persons other than Declarant on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

10.10. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.11. Capitalization of Association. Upon acquisition of record title to a Unit by the first Builder or other Owner thereof other than the Declarant, a contribution shall be made by such Builder or other Owner to the working capital of the Association in an amount equal to ONE HUNDRED FIFTY AND NO/100 DOLLARS (\$150.00) per Unit for that year. This amount shall be in addition to, not in lieu of, the Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid at closing and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

10.12. Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

ARTICLE XI
ARCHITECTURAL STANDARDS

11.1. General. No structure (including, but not limited to, buildings, signs, walls, and mailboxes) shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article, and approval of the appropriate committee under Section 11.2. Notwithstanding this, the Board may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Further, the Declarant, in its discretion, may exempt certain designees, including but not limited to, Builders, from any or all of the requirements of this Article for original construction, provided such designees are contractually obligated to comply with design review restrictions imposed by Declarant.

Any Owner may remodel, paint or redecorate the interior of structure(s) of a Unit without approval provided such improvements are not visible from outside such structure(s). Modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration.

11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the committees as described in subsections (a) and (b) below. The members of committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Declarant or the Board. The committees may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

(a) New Construction Committee. The New Construction Committee ("NCC") shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint or remove all members of the NCC, who shall be responsible to the Declarant and shall serve as Declarant's agents at the Declarant's discretion. There shall be no

surrender or assignment of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the NCC shall become the province of the Association and the Board may, at its option, either appoint the members of the NCC, who shall thereafter serve and may be removed in the Board's discretion, or combine the NCC and the MC (hereafter defined) into a single architectural review committee which shall assume all powers and responsibilities of both committees under this Declaration. Declarant may utilize the NCC to administer design review restrictions imposed by Declarant upon those Persons who have been designated by it as being exempt from the requirements of this Article.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee ("MC") to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space.

11.3. Guidelines and Procedures.

(a) The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Properties. The NCC shall adopt such Design Guidelines at its initial organizational meeting and shall be responsible for reviewing Plans in accordance with the Design Guidelines. The Declarant, for so long as it continues to own any part of the Properties and, thereafter, the Board, shall be the deciding authority for resolving any questions the NCC may have as to the interpretation or application of the Design Guidelines.

Each Owner acknowledges that the Design Guidelines may be amended and that, for so long as it has the right to appoint the members of the NCC, the Declarant shall have sole and full authority to amend the Design Guidelines in its discretion. Thereafter, the NCC shall have such amendment authority. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The NCC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and, subject to Declarant's right to exempt certain designees from the requirements of this Article, all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended by Declarant from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the NCC.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the appropriate committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the committees may consider the quality of design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

In the event that the NCC or MC fails to approve or to disapprove any application within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved as submitted. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the NCC pursuant to Section 11.5.

11.4. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, are site specific unless otherwise noted, and shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.5. Variance. The NCC may authorize variances from compliance with any of its guidelines and procedures. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not necessarily be considered a hardship warranting a variance.

11.6. Limitation of Liability. Neither the Declarant, the NCC or the MC shall be liable to anyone submitting plans for approval in accordance herewith or to any other Person for damages (whether direct, indirect, consequential or otherwise) arising out of or in connection with: (a) the approval or disapproval or failure to approve or disapprove any such plans; (b) enforcement or failure to enforce any site maintenance or other requirements hereof; (c) the approval or disapproval of, or failure to approve or disapprove, any architectural, landscaping, development or other plans for improvements to any property adjacent to, or situated on or in the proximity of the Properties; (d) the development or construction of, or the failure to develop or construct, any improvements (including landscaping) on lands adjacent to or in the proximity of the Properties; or (e) defects (whether latent or otherwise) in such plans. Anyone submitting plans for approval agrees not to seek any such damages against the Declarant, the NCC or the MC. In addition, each Owner shall release and hold harmless Declarant, the NCC, the MC, and the members thereof from any and all liability, including attorneys' fees and court costs actually incurred, regardless of whether suit is brought or any appeal is taken therefrom, arising out of any approval given or denied by the NCC or the MC under this Article.

Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the NCC or the MC shall bear any responsibility for ensuring the value of a Unit, or the structural integrity, workmanship, quality or soundness of approved construction or modifications, nor for ensuring compliance with building codes, engineering and architectural standards, and other governmental requirements.

Each Owner acknowledges that the approval of any application pursuant to this Article does not constitute an assurance or guarantee that the approved improvements are safe or fit for habitation. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

11.7. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant or the Board or its designees, with the consent of the Declarant for so long as Declarant owns any part of the Properties, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, which may include monetary fines imposed by the NCC, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines, in addition to the fees, costs and fines provided in the preceding paragraph, may be excluded by the Board from the Properties. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Declarant or the Association, with the consent of the Declarant for so long as it owns any part of the Properties, shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the NCC and MC.

ARTICLE XII

USE RESTRICTIONS AND RULES

12.1. Plan of Development; Applicability; Effect. The Properties are subject to the land development, architectural, and design provisions set forth in Article XI, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, the Initial Use Restrictions, and the rules of the Association.

12.2. Authority to Promulgate Use Restrictions and Rules. Initial use restrictions and rules ("Initial Use Restrictions") applicable to all of the Properties are attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, such Initial Use Restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Notwithstanding anything to the contrary herein, the Initial Use Restrictions or any then-existing use restrictions will automatically terminate and cease to affect the Properties on the date that is twenty-five (25) years after the Effective Date; provided, however, that such Initial Use Restrictions may be extended for an unlimited number of successive 10-year periods by the affirmative vote of Owners representing at least the Minimum Required Vote.

(b) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Initial Use Restrictions. The Board shall send notice by mail to all Owners concerning any such proposed action regarding the Initial Use Restrictions at least five business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved (i) by Owners representing at least the Minimum Required Class "A" Vote, or (ii) by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Owners to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(c) Alternatively, the Owners, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Initial Use Restrictions or any then-existing use restrictions (i) with the approval of the Class "B" Member, if any, and (ii) with the approval of Owners representing at least the Minimum Required Class "A" Vote.

(d) At least 30 days prior to the effective date of any action taken under subsections (b) or (c) of this Section, the Board shall send a copy of the proposed changes to the Initial Use Restrictions or any then-existing use restrictions to each Owner. The Association shall provide, without cost, a copy of the use restrictions then in effect to any requesting Member or Mortgagee.

12.3. Owners' Acknowledgment. All Owners and occupants of Units are hereby given notice that use of their Units is limited by the Initial Use Restrictions, as such Initial Use Restrictions may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can from time to time be affected by changes to the Initial Use Restrictions.

12.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C," neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside or outside of structures on their Units of the

kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions on displays visible from the outdoors for the purpose of minimizing damage and disturbance to other Owners and occupants.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the available Common Areas, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules of this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months.

(g) Reasonable Rights to Develop. No rule or action by any Owner, the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(h) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, and in compliance with all rules in force at that time, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

The limitations in this Section 12.4 shall apply only to the Initial Use Restrictions, as such may be amended; they shall not apply to amendments to this Declaration adopted in accordance with Section 18.2.

ARTICLE XIII

EASEMENTS

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

13.2. Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as the Declarant owns any part of the Properties, the Association, and the designees of each (which may include, without limitation, the City of Burleson, Tarrant County, Texas and any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar monitoring systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, all other infrastructure, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier, sanitary sewer provider, electric company, telephone company, cable company, natural gas supplier, and other utility companies ingress and egress easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, storage tanks, pumps, meters, boxes and other utilities. However, the exercise of this easement shall not extend to permitting the removal, damage or destruction of any improvements not located on utilities easements, or entry into the dwelling on any Unit, nor shall any utilities or infrastructure be installed or relocated on the Properties, except as approved by the Board and Declarant if within the Class "B" Control Period.

13.3. Easements for Maintenance of Fences and Landscaping. The Declarant hereby reserves for itself and the Association, and their respective successors, assigns, and designees, the nonexclusive right and easement, to enter upon any portion of the Properties, including without limitation upon any Unit, to (a) install, keep, maintain, remove and replace any masonry fence and related landscaping constructed as a buffer along McAlister Road or Hemphill Drive, and (b) remove trash and other debris therefrom and fulfill their maintenance responsibilities and rights as provided in this Declaration.

No Owner or other Person, other than Declarant, the Association, and their respective successors, assigns, or designees, shall in any way alter or modify any masonry fence or related landscaping constructed as a buffer along McAlister Road or Hemphill Drive. Owners of the Units adjacent to and upon which the masonry fences and related landscaping are constructed shall keep such areas free from trash, litter, or debris.

The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any portion of the Properties, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument.

13.4. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property annexed pursuant to Article IX, or any property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property; however, Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of its development uses. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such Property.

13.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, Initial Use Restrictions, and rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE XIV

MORTGAGEE PROVISIONS

14.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration, By-Laws, or Initial Use Restrictions relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

14.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XV **DECLARANT'S RIGHTS**

Any or all rights and obligations of Declarant may be transferred to other Persons, but the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws and shall not be effective unless signed by Declarant and duly recorded in the Public Records. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property described in Exhibit "A" or depicted on Exhibit "B" in any manner whatsoever. Declarant may, in its sole discretion, at any time dedicate any portion of the Properties then owned by Declarant to the City of Burleson, Tarrant County, Texas, or to any other governmental or other entity for any purpose.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and sales of Units by Declarant and Builders shall continue, it shall be expressly permissible for the Declarant and Builders authorized by Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, and sales offices. The Declarant and Builder(s) authorized by Declarant shall have easements for access to and use of such

facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned or leased by the Declarant or a Builder and any clubhouse or community center which may be owned by the Declarant or the Association, as models and sales offices, respectively.

So long as Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's written consent. Any attempted recordation without compliance herewith shall result in such instrument being void unless a consent of Declarant is subsequently recorded in the public records.

Each Owner, by accepting title to a Unit and becoming an Owner, acknowledges awareness that Mistletoe Hill is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties, or (b) changes in any conceptual or master land use plan for the Properties, including, but not limited to, the Master Land Use Plan; provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time). Each Owner acknowledges that no representations, warranties or guarantees are made or relied upon as to: (a) the design, construction, completion, development, use, benefits, or value of the Properties; or (b) the number, types, sizes, prices or designs of any structures to be built on any part of the Properties. Notwithstanding anything to the contrary in this Article, the provisions of this Article shall be enforceable only to the extent not in violation of any applicable provision of law.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) the date that is forty (40) years after the Effective Date of this Declaration, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE XVI

LIMITATIONS ON LIABILITY

16.1. Constituent Partners. Notwithstanding anything to the contrary in this Declaration, no present or future "Constituent Partner" in or agent of Declarant, nor any shareholder, officer, director, employee, trustee, beneficiary, or agent of any corporation, trust, partnership, limited liability company, or other entity that is or becomes a Constituent Partner in Declarant, shall be personally liable, directly or indirectly, under or in connection with this Declaration, or any instrument or certificate otherwise executed in connection with this Declaration, or any amendments or modifications to any of the foregoing made at any time or times, heretofore or hereafter; and each of the Owners and their respective successors and assignees waives, and does hereby waive, any such personal liability of such Constituent Partner.

Neither the negative capital account of any Constituent Partner in Declarant, nor any obligation of any Constituent Partner in Declarant to restore a negative capital account, or to contribute capital to Declarant, or to any other Constituent Partner in Declarant, shall at any time be deemed to be the property or an asset of Declarant, or any such other Constituent Partner (and

none of the Owners nor any of their respective successors or assignees shall have any right to collect, enforce or proceed against or with respect to any such negative capital account or partner's obligation to restore or contribute).

Furthermore, each of the Owners and their respective successors and assignees releases the Declarant from, and does hereby waive, any obligations, debts, liabilities, claims, costs, expenses, damages, and losses, to the extent covered or reimbursed by insurance.

As used in this Article, a "Constituent Partner" in Declarant shall mean any direct partner in Declarant and any person or entity that is a partner in any partnership or entity that, directly or indirectly through one or more other partnerships, is a partner in Declarant.

16.2. Builder Performance. Unless otherwise specifically provided in a separate written agreement, Declarant and Affiliates of Declarant shall not be responsible for, or guarantors of, performance by any Builder of all or any of its obligations to any Owner pursuant to any contracts for the sale of a Unit or the construction of a structure on a Unit or otherwise. Neither Declarant nor any Affiliates of Declarant has made, or have made, any warranty or representation with respect to performance by any Builder under any contract or otherwise.

Each Owner acknowledges and agrees that neither Declarant nor any Affiliate of Declarant share any liability or obligation to Owner, related to or arising out of any contract with a Builder or otherwise, by reason of any failure by a Builder fully and adequately to perform its obligations to Owner. Owner further acknowledges and agrees that Owner has not, in entering into any contract with a Builder, relied upon any representations, oral or written, of Declarant or any Affiliate of Declarant or any salesperson. "Affiliate", for purposes of this Article, means a partner, director, subsidiary, shareholder, officer, employee, agent, co-venturer, executor, personal representative, trustee, attorney, or a person or entity which (either directly or indirectly through one or more intermediaries), controls, is in common control with or is controlled by, another person or entity, and any person or entity that is a director, trustee, officer, employee, agent, partner, shareholder, subsidiary or attorney of any of the foregoing. For the purposes of this definition, the term "control" means (a) legal or beneficial ownership of 10% or more of the voting interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

16.3. Excavation. All Owners are hereby placed on notice that Declarant, any Affiliate of Declarant, and/or its agents, contractors, subcontractors, licensees and other designees, successors or assignees, may be, from time to time, conducting excavation, construction and other activities within or in proximity to the Properties. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, easement or other interest, and by using any portion of the Properties, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Properties where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (c) Declarant, any Affiliate of Declarant and all of their agents, contractors, subcontractors, licensees and other designees,

successors and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses, damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the aforesaid activities, and (d) any purchase or use of any portion of the Properties has been and will be made with full knowledge of the foregoing.

16.4. Health, Safety and Welfare. No provision of the Declaration, the By-Laws or the Articles of Incorporation shall be interpreted as a representation or duty of the Declarant or the Association to provide for, protect or further the health, safety and welfare of the Owners.

ARTICLE XVII

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

17.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, Owners, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving, arising out of or relating to (a) the use, sale, purchase, construction, improvement, maintenance, operation or marketing of the Properties; (b) the interpretation, application or enforcement of this Declaration, the By-Laws, Initial Use Restrictions, the Association rules, or the Articles; (c) the administration, operation, management, use or maintenance of the Association and its assets; or (d) the alleged negligent design, maintenance, development, improvement, construction or operation by Declarant of any portion of the Properties (collectively, "Claims"), except for those Exempt Claims described in Section 17.2, shall be resolved using the procedures set forth in Section 17.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

17.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 17.3:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article X (Assessments);

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI (Architectural Standards) and Article XII (Initial Use Restrictions);

(c) any suit between Owners that does not include Declarant as a party thereto, if such suit asserts a Claim which would constitute a cause of action under the laws of the State of Texas or the United States but does not or would not include or involve any claim, right, privilege, membership, or defense based on or arising from the Declaration, By-Laws, Initial Use Restrictions, Articles or rules of the Association;

(d) any suit in which all indispensable parties are not Bound Parties;

(e) any suit which all the parties thereto agree to consider as an Exempt Claim;

(f) a construction defects claim which involves damages in excess of \$50,000.00 per Unit; and

(g) the submission to a court of any settlement as a settlement affecting a class if such a class settlement is reasonably necessary to resolve a dispute which would otherwise not be an Exempt Claim.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 17.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 17.3 shall require the approval of the Association.

17.3. Mandatory Procedures For All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

2. the basis of the Claim (i.e., the laws, regulations, contract, provisions of this Declaration, the By-Laws, the Initial Use Restrictions, the Articles or rules or other authority out of which the Claim arises);

3. what Claimant wants Respondent to do or not do to resolve the Claim; and

4. that Claimant will meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of an independent dispute resolution center, or such other independent agency providing similar services upon which the Parties may mutually agree.

2. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

3. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within 15 days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 30 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Texas. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Texas.

17.4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 17.3(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 17.3(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 17.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 17.4(c).

(c) Claimant shall prepay to the arbitration panel the sum of \$1,000.00 to be applied toward payment of any Post-Mediation Costs of the Parties, and, in addition, shall advance all arbitration costs until an Award is made. If a Respondent brings a Claim (i.e., a counterclaim) against a Claimant, the arbitration panel may, upon request, order such Respondent to advance a portion of the arbitration costs. If an Award is equal to or more favorable to a Claimant than such Claimant's Settlement Demand, the arbitration panel may, in its discretion, add all or a portion of such Claimant's Post-Mediation Costs to the Award, and allocate such Costs to the Respondents in such proportions as the arbitration panel deems appropriate. If an Award against a Respondent is equal to or less favorable to Claimant than such Respondent's Settlement Offer to that Claimant, the arbitration panel may, in its discretion, also award to such Respondent its Post-Mediation Costs, and allocate such Post-Mediation Costs to the Claimants in such proportions as the arbitration panel deems appropriate.

17.5. Enforcement of Resolution. After resolution of any Claim through negotiation, mediation or arbitration, in accordance with Section 17.3, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 17.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

17.6. Declarant's Right to Suspend or Terminate. So long as it owns any part of the Properties, Declarant shall retain the right, from time to time in its sole discretion, to suspend or terminate this Article as to any and all proceedings not yet underway, by recording a notice of such suspension or termination in the public records of the county where the Properties are located as a supplement to this Declaration.

ARTICLE XVIII
GENERAL PROVISIONS

18.1. Duration.

(a) Unless otherwise provided by Texas law, in which case such law shall control, this Declaration may not be terminated within 25 years after the Effective Date without the consent of all Unit Owners and the Declarant, if Declarant owns any portion of the Properties. After 25 years, this Declaration shall be extended automatically for successive 10-year periods unless Owners representing at least the Minimum Required Vote sign a document stating that the Declaration is terminated and such document is recorded within one year before any extension. In such case, this Declaration shall expire on the date specified in the termination document. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

(b) Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

18.2. Amendment.

(a) By Declarant.

(i) Notwithstanding anything to the contrary, until conveyance of the first Unit by Declarant to an Owner other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase mortgage loans on the Units; (iv) to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (v) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant still owns any part of the Properties, it may unilaterally amend this Declaration for the purpose of clarification or to correct technical, typographical, or scrivener errors, or for any other purpose provided the amendment has no material adverse effect upon any right of any Owner.

(ii) Notwithstanding the above, and in addition to any other amendment rights granted elsewhere in this Declaration, during the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose; provided, however, that any material amendment to this Declaration which would affect any Owner's rights or interests under this Declaration or the Association's rights, title to, or interest in and to the Common Area, shall require the approval of at least 67% of the Owners.

(b) By Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing the Minimum Required Vote, and the consent of the Declarant, so long as the Declarant owns any part of the Properties.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

(c) Effective Date and Validity. To be effective, any amendment must be recorded in the Public Records.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

18.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

18.4. Litigation. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article X; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims and defenses brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor or vendor arising out of a contract for services or supplies between the Association and such contractor or vendor. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

18.5. Intentionally Deleted.

18.6. Use of the Words "Mistletoe Hill". No Person shall use the words "Mistletoe Hill" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners or Builders may use the terms "Mistletoe Hill" in printed or promotional matter where such term is used solely to specify that particular property is located within Mistletoe Hill. The Association also shall be entitled to use the words "Mistletoe Hill" in its name. Any use of the registered name "Mistletoe Hill" shall be in a manner in which the proprietary rights to such name are protected.

18.7. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the By-Laws, the Initial Use Restrictions, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or

for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit Owner(s).

18.8. Notice of Sale or Transfer of Title. Any Owner who sells or otherwise transfers title to his or her Unit shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which notice of the sale or transfer is received by the Board, notwithstanding the transfer of title.

18.9. Prohibition Against Discrimination. Discrimination by race, color, religion, age, sex or national origin in the administration of the or the interpretation, application and enforcement of this Declaration, the By-Laws, the Initial Use Restrictions, the Association rules or the Articles shall be prohibited.

Unofficial Copy

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 9th day of February, 2004.

DECLARANT:

MISTLETOE HILL, L.P., a Texas limited partnership

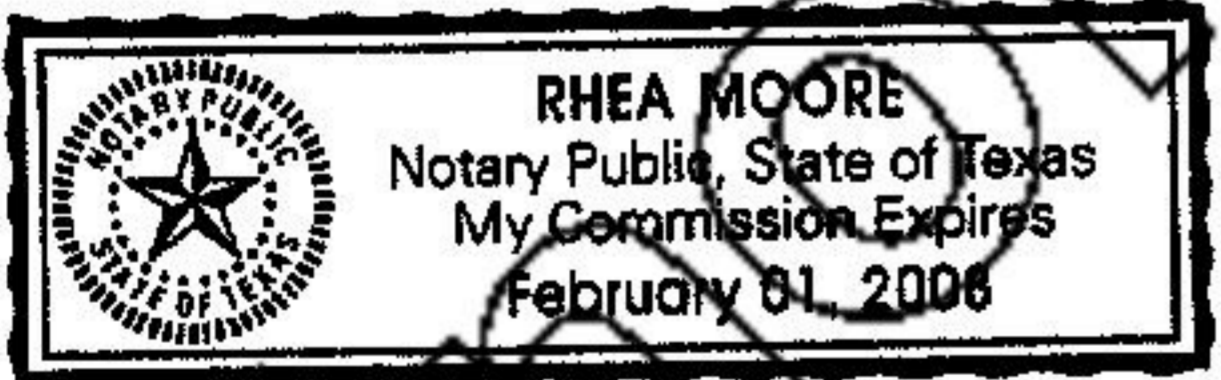
By: Mistletoe Hill Genpar, L.L.C., a Texas limited liability company, its general partner

By: Lake Hollow Corp., a Texas corporation, its sole member

By: *Gary W. Havener*
Gary W. Havener, President

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

The foregoing instrument was acknowledged before me this 9th day of February, 2004, by Gary W. Havener, President of Lake Hollow Corp., a Texas corporation, managing member of Mistletoe Hill Genpar, L.L.C., a Texas limited liability company, general partner of Mistletoe Hill, L.P., a Texas limited partnership, on behalf of said corporation, limited liability company, and limited partnership.



Rhea Moore
NOTARY PUBLIC, STATE OF TEXAS

Upon recording, please return to:

Chad A. Key
Kelly, Hart & Hallman, P.C.
201 Main Street, Suite 2500
Fort Worth, Texas 76102

EXHIBIT "A"

Legal Description of Property Initially Submitted to this Declaration

Lots 38 & 39, Block 1; Lots 17 thru 34, Block 5; Lots 1 thru 28, Block 6; Lots 1 thru 48, Block 7; Lots 1 thru 61, Block 8; and Lots 1 thru 12, Block 9; Mistletoe Hill Addition Phase I, according to the plat recorded in Volume A, Page 8671, and Lots 1 thru 37, Block 1; Lots 1 thru 17, Block 2; Lots 1 thru 21, Block 3; Lots 1 thru 28, Block 4; and Lots 1 thru 16, Block 5; Mistletoe Hill Addition Phase II according to the plat recorded in Volume A, Page 8672, Plat Records, Tarrant County, Texas.

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EXHIBIT "B"

Site Plan Showing Property Subject to Later Annexation to this Declaration

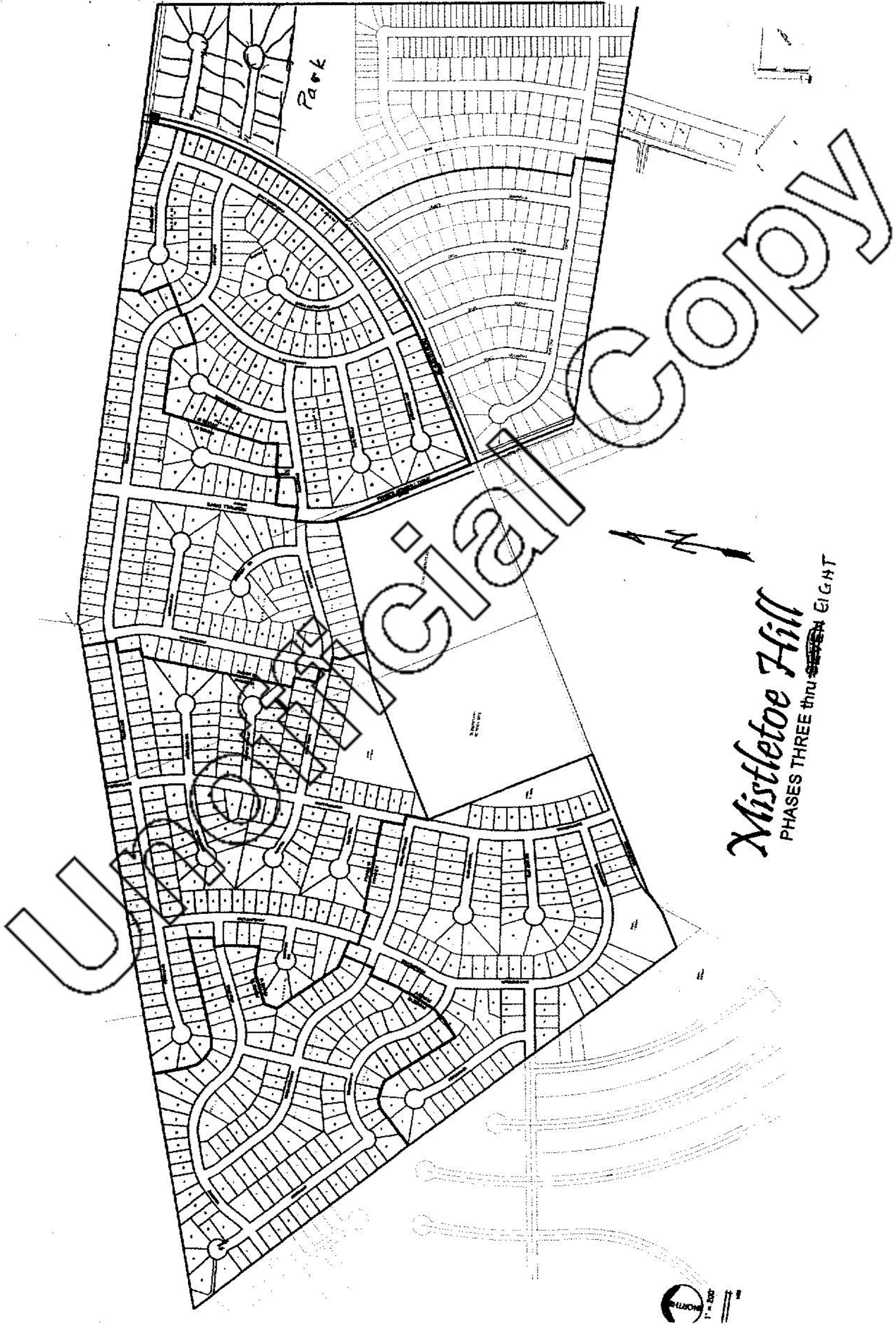


EXHIBIT "C"

Initial Use Restrictions

The purpose of Design Guidelines and Initial Use Restrictions is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities which fall outside of "the norm." In fact, it is expressly intended that the NCC, the MC, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Initial Use Restrictions and other provisions of the governing documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it stop the Board from taking enforcement action in any appropriate circumstances.

Subject to the above, the following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited pursuant to the Declaration.

1. General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or sales office for any real estate broker retained by the Declarant to assist in the sale of property, offices for any property manager retained by the Association or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages or the public parking lot(s) which are part of the Common Area (and for which a parking charge will be set and collected by the Association and paid by any Owner occupying a space on such lot(s)); provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas;

(b) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks, except for special days or events designated by the Association, and then only in accordance with all applicable governmental statutes, ordinances, regulations, and restrictions (i.e., July 4th, New Year's Eve);

(j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any storm drain, sanitary sewer, drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide or replat Units which it owns;

(n) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(o) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(p) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank approved by the NCC;

(q) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance or a hazardous or offensive use, cause excessive parking on streets, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program;

(r) The removal of any tree, except for diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons, with a caliper 3 inches or more, unless approved by the NCC or the MC pursuant to Article XI; and

(s) Oil, gas or mineral exploration, drilling, boring, development, refining, quarrying, or mining operations and all construction and equipment incident thereto, including, but not limited to, oil or gas wells, related equipment or facilities, excavations for minerals, and mine shafts.

3. Prohibited Conditions and Activities. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except that Declarant and the Association shall have the right to draw water from such sources;

(d) Capturing, trapping or killing of wildlife within the Properties, except in circumstances posing an imminent threat to the safety of persons using the Properties;

(e) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(f) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without the prior approval of the appropriate committee pursuant to Article XI;

(g) Operation of motorized vehicles on pathways or trails maintained by the Association;

(h) Any construction, erection, or placement of a thing, permanently or temporarily, on the outside portions of the Unit whether such portion is improved or unimproved, unless approved by the NCC or MC as set forth in Article XI. This shall include, without limitation, basketball hoops, swing sets and similar sports and play equipment; artificial vegetation or other artificial landscaping conditions (e.g., statues or other lawn ornaments); clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; antennas, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; tents, tanks, trailers or temporary buildings; window or wall air conditioning units; and hedges, walls, dog runs, animal pens, or fences of any kind.

4. Leasing of Units. "Leasing," for purposes of this Paragraph 4, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, or gratuity. All leases shall be in writing. The Board may require a minimum lease term of one (1) year. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, the Initial Use Restrictions, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing in a manner consistent with the Declaration.

EXHIBIT "E"

By-Laws

of the

Mistletoe Hill Homeowners' Association, Inc.

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**BY-LAWS
OF THE
MISTLETOE HILL HOMEOWNERS'
ASSOCIATION, INC.**

PREAMBLE

These By-laws of Mistletoe Hill Homeowners' Association, Inc. ("By-laws") are subject to, and governed by, the Texas Non-Profit Corporation Act (the "Act") and the articles of incorporation of Mistletoe Hill Homeowners' Association, Inc., a Texas non-profit corporation. In the event of a conflict between the provisions of these Bylaws and the mandatory provisions of the Act, the provisions of the Declaration of Covenants, Conditions and Restrictions for Mistletoe Hill (the "Declaration") or the articles of incorporation of the Association (the "Articles of Incorporation"), such provisions of the Act, the Declaration or the Articles of Incorporation, as the case may be, will be controlling. All capitalized undefined terms used herein shall have the meanings respectively ascribed to them in the Declaration.

Article I: Name, Principal Office, and Definitions

1.01. Name.

The name of the corporation is the Mistletoe Hill Homeowners' Association, Inc. ("Association").

1.02. Principal Office.

The Association's principal office shall be located in Tarrant County, Texas. The Association may have other offices, either within or outside Texas, as the Board of Directors determines or as the Association's affairs require.

1.03. Definitions.

The words used in these By-Laws shall have their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration, as it may be amended, unless the context indicates otherwise.

Article II: Membership: Meetings, Quorum, Voting, Proxies

2.01. Membership.

The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration. Provisions of the Declaration pertaining to membership are incorporated by this reference.

2.02. Place of Meetings.

The Association shall hold meetings at its principal office or at such other suitable place convenient to the Members as the Board may designate.

2.03. Annual Meetings.

The Association shall hold its first meeting, whether a regular or special meeting, within one year after the first Unit is conveyed to an Owner other than a Builder. The Board shall set the date and time of subsequent regular annual meetings. Annual meetings may be conducted electronically (*i.e.*, via the Internet, intranet, or teleconference) if, and to the extent, permitted by law.

2.04. Special Meetings.

The President may call a special meeting of the Association. It also shall be the President's duty to call a special meeting (i) if so directed by Board resolution or (ii) upon receipt by the Association's Secretary of a petition or written demand signed by at least five percent (5%) of the Members containing a demand for a special meeting and describing the meeting's purpose.

If the President does not send notice of a special meeting pursuant to Section 2.05 within 30 days after the date the written demand is received by the Association's Secretary, any Member signing the demand may set the time and place of the special meeting and give the Association notice pursuant to Section 2.05.

2.05. Notice of Meetings.

The Association's Secretary shall cause written notice stating the place, day, and hour of any Association meeting to be given in any manner permitted by Texas law. If permitted, notice may be posted in a conspicuous, prominent place within the Community, delivered by hand delivery, or sent by mail, facsimile, electronic mail, or other electronic communication device, or such other manner which is reasonably calculated, as determined in the Board's discretion, to provide personal notice to the Members entitled to notice. Notice shall be given at least 5, but less than 30, days before the date of the meeting, by or at the direction of the President, the Secretary, or the officers or Persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No other business shall be transacted at a special meeting except as stated in the notice.

If posted, notice shall be deemed delivered when posted. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the Member at his or her address as it appears on the Association's records, with postage prepaid. If sent by facsimile, electronic mail, or such other electronic communication device, notice shall be deemed delivered when transmitted to the Member at his or her address or number as it appears on the Association's records. Failure to receive actual notice of an Association meeting shall not affect the validity of any action taken at such meeting.

2.06. Waiver of Notice.

Waiver of notice of an Association meeting shall be the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. A Member's attendance at a meeting shall be deemed a waiver by such Member of

notice of the meeting unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at the meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.07. Adjournment of Meetings.

If the Association cannot hold a meeting because a quorum is not present, a majority of the Members who are present may adjourn the meeting to a time at least five but not more than 30 days from the date called for the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Association shall give the Members notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that at least a majority of the number of votes required to constitute a quorum shall be required to approve any action taken.

2.08. Voting.

Members shall have such voting rights as are set forth in the Declaration, which provisions are incorporated herein by this reference.

Members may vote at a meeting by voice vote or ballot or may vote by mail without the necessity of a meeting, as determined by the Board; provided, the Board shall hold meetings when required by the Declaration, these By-Laws, or Texas law. Votes for the election of directors shall be cast by secret written ballot. All Member votes cast at meetings are subject to the quorum requirements of Section 2.11. The Board may permit votes to be cast electronically (*i.e.*, via the Internet, intranet, or electronic mail) with sufficient verification of authenticity and if permitted by law.

2.09. Proxies

On any matter as to which a Member is entitled personally to cast the vote for his Unit(s), such vote may be cast in person or by proxy, subject to Texas law.

Every proxy shall be in writing specifying the Unit for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Unit for which it was given; (b) the Secretary's receipt of written notice of revocation of the

proxy or of the death or judicially declared incompetence of a Member who is an individual; or (c) 90 days from the meeting date for which the proxy was originally given, unless the proxy specifies a shorter period.

2.10. Majority.

As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum.

Except as these By-Laws or the Declaration otherwise provide, the presence of Members, either personally or by proxy, representing 25% of the total votes in the Association shall constitute a quorum at all Association meetings.

2.12. Conduct of Meetings.

The President or other Board designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are recorded in the Association's minute book. Owners may tape record or videotape Association meetings subject to reasonable rules imposed by the Board.

2.13. Action Without a Meeting.

At any time following the Class "B" Control Period, without holding a meeting pursuant to Sections 2.03 or 2.04, Members may take any action that Texas law requires or permits the Members to take at a meeting (subject to any limitations imposed under the Declaration), if Members representing at least 80% of the Association's votes sign a written consent specifically authorizing the proposed action. The Association need not give prior notice before soliciting such consent; provided, the Association must send written consent forms to all Members. Members shall sign, date, and deliver such consents to the Association within 60 days after the Association's receipt of the earliest dated consent. The Association's Secretary shall file such consents with the Association's minutes and the consents shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article III: Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.01. Governing Body; Composition.

The Board of Directors shall govern the Association's affairs. Each director shall have one vote. Except for Elected Directors, directors need not be Members or residents of the Community. A director must be at least 18 years old. In the case of a Member who is not an individual, any officer, director, partner, employee, or trust officer of such Member shall be

eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no more than one such representative of any Member, nor more than one occupant of a particular Unit, may serve on the Board at any one time, except in the case of directors the Class "B" Member appoints.

3.02. Number of Directors.

The Board shall consist of three directors. The initial Board shall consist of the three directors identified in the Articles of Incorporation.

3.03. Directors During Class "B" Control Period.

The Class "B" Member shall have complete discretion in appointing and removing all directors during the Class "B" Control Period. Class "B" Member-appointed directors shall serve at the pleasure of the Class "B" Member.

3.04. Nomination and Election Procedures.

(a) **Nominations and Declarations of Candidacy.** Prior to each election of Elected Directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any position to be filled. Except with respect to directors the Class "B" Member appoints, nominations for election to the Board shall be made in accordance with policies and procedures the Board establishes. Such policies and procedures may include, but are not limited to, permitting or requiring that nominations be made through a nominating committee and permitting "write-in" candidates. The Board also shall permit nominations from the floor at any election meeting.

The Board shall give each candidate a reasonable, equal opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) **Election Procedures.** A Member may cast the votes assigned to the Units which it represents for each position to be filled from the slate of candidates on which he or she is entitled to vote. Cumulative voting is not allowed. That number of candidates which equals the number of positions to be filled and receiving the greatest number of votes shall be elected.

3.05. Directors After the Class "B" Control Period; Election and Term of Office.

Except as these By-Laws or the Declaration may otherwise specifically provide, election of directors shall take place at the Association's annual meeting. Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall hold an election at which the Members shall elect three directors to replace the directors appointed by the Class "B" Member. In order to establish staggered terms for such directors, at least one-half of the directors initially elected by the Members shall serve two-year terms and the remainder shall serve one-year terms, as such directors determine among themselves. Following these initial terms, directors shall serve two-year terms. The directors which are not appointed by the Class "B" Member are referred to collectively as "Elected Directors."

Upon expiration of the terms of each director, the Board shall hold an election at which the Members shall elect successors. Notwithstanding the stated length of any term, directors shall hold office until their respective successors have been elected.

Notwithstanding the above, the Board, as deemed necessary or convenient in the exercise of its reasonable discretion, may adjust the commencement of director terms (as staggered) to begin at the same time each year, or may increase the number of directors serving on the Board to an odd number not greater than seven.

3.06. Removal of Directors and Vacancies.

Any Elected Director may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of such director's term. Elected Directors may not be removed by the Class "B" Member.

Any Elected Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or occupies a Unit for which assessments are so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority vote of the Board, excluding the director at issue. If the director is removed, the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term.

This Section shall not apply to directors the Class "B" Member appoints nor to any director serving as Declarant's representative. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

B. Meetings.

3.07. Organizational Meetings.

The Board shall hold its first meeting following each annual membership meeting within 10 days thereafter at such time and place as the Board shall fix.

3.08. Regular Meetings.

The Board may hold regular meetings at such time and place as the Board shall determine, but the Board shall hold at least four such meetings during each fiscal year with at least one per quarter.

3.09. Special Meetings.

The Board shall hold special meetings when called by written notice signed by the President, Vice President, or any two directors.

3.10. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall give notice to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone (either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director); or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Except for emergency meetings, notice of a Board meeting shall be posted in a conspicuous place within the Community at least 48 hours in advance of the meeting or provided in any other manner reasonably anticipated to provide notice to all Members, including publication in an Association newsletter with community-wide circulation, posting on a Community cable television channel, or posting on a Community Internet or intranet page. In lieu of notice of each regular Board meeting, the Board may post or publish a schedule of upcoming Board meetings.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present; and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the meeting's purpose. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

(d) Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment.

3.11. Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a Board or committee meeting by means of telephone or other electronic means, through which all persons participating in the meeting can hear each other. Participation in this manner shall constitute presence at the meeting for all purposes.

3.12. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless these By-Laws or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue, notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than two nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Conduct of Meetings.

The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. Owners may tape record or videotape Board meetings subject to reasonable rules the Board imposes.

3.14. Open Meetings; Executive Session.

Subject to the provisions of Section 3.15, all Board meetings shall be open to all Owners. However, attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak, and the Board concurs. In such case, the President may limit the time any such individual may speak.

Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss with the Association's attorney matters relating to pending or threatened litigation which are protected by the attorney-client privileges, or to discuss among the Board any other matter of a sensitive nature, if and to the extent Texas law permits.

3.15. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all directors sign a consent in writing, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.16. Powers.

The Board shall have all of the powers and duties necessary for administering the Association's affairs and for performing all of the Association's responsibilities and exercising all of the Association's rights as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or Texas law require to be done and exercised exclusively by the membership generally.

3.17. Duties.

The Board's duties shall include, without limitation:

- (a) adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) providing for the operation, care, upkeep, and maintenance of the Common Area consistent with the Community-Wide Standard;
- (c) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of necessary equipment, supplies, and materials;
- (d) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's business judgment, in depositories other than banks;
- (e) opening bank accounts on the Association's behalf and designating the signatories required;
- (f) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (g) after termination of the Class "B" Control Period, submitting for bid any planned Association expenditure (whether for capital items, services, maintenance, or otherwise) anticipated to exceed \$10,000.00 in any one fiscal year; provided, the Board is not obligated to contract with or otherwise retain the services of the lowest bidder;
- (h) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;
- (i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (j) paying the cost of all services rendered to the Association;
- (k) keeping books with detailed accounts of the Association's receipts and expenditures;
- (l) making available to any Owner, the holders, insurers, and guarantors of any Mortgage on any Unit, and any prospective purchaser of a Unit, current copies of the Governing Documents and all other Association books, records, and financial statements as provided in Section 6.03;

(m) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Mistletoe Hill;

(n) indemnifying an Association director, officer, or committee member, or former Association director, officer, or committee member to the extent such indemnity is required by Texas law, the Articles of Incorporation, or the Declaration; and

(o) maintaining, and retaining for the time periods required, the "official records" of the Association.

3.18. Compensation.

The Association shall not compensate a director for acting as such. The Association may reimburse any director for expenses incurred on the Association's behalf if approved by a majority of the other directors. In addition, subject to Section 3.27, nothing herein shall prohibit the Association from compensating a director for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association. The foregoing also applies to any entity with which a director is affiliated.

3.19. Right of Class "B" Member to Disapprove Actions.

During the Class "B" Control Period, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the Class "B" Member's sole and absolute judgment, would tend to impair rights or interests of Declarant, any Declarant Affiliate, or Builders, interfere with development or construction of any portion of Mistletoe Hill, or diminish the level of services the Association provides.

(a) **Notice.** The Association, the Board, and each committee shall give the Class "B" Member written notice of their meetings and proposed actions to be approved at their meetings (or by written consent in lieu of a meeting). The notice shall comply with Section 3.10 and shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) **Opportunity to be Heard.** The Association, the Board, and each committee shall give the Class "B" Member the opportunity at any meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval described in this Section.

(c) **Exercise of Rights.** The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member may exercise its right to disapprove at any time within 10 days following the later of: (i) the date of the meeting at which such action was proposed, or (ii) the Class "B" Member's receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction by the Association, the Board, or any committee. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

(d) **Condition of Implementation.** No action, policy, or program subject to the Class "B" Member's right of disapproval shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

3.20. Management.

The Board may employ a professional management agent or agents, at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize and are otherwise within the scope of the Board's authority. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Section 3.17(a) (with respect to adoption of the budget). The Board may contract with or employ Declarant or any Declarant Affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination which the Association may exercise with or without cause and without penalty at any time after termination of the Class "B" Control Period upon not more than 90 days written notice. After the Class "B" Control Period terminates, the Association may not terminate any management contract, or retain a new managing agent, without the approval of Members representing a majority of the Association's total votes, and Declarant, for so long as Declarant or any Declarant Affiliate owns any property described on Exhibit "A" or Exhibit "B" to the Declaration.

The Class "A" Members shall have no right to terminate a management contract during the Class "B" Control Period. Unless the Board otherwise grants such right, or unless the management contract otherwise provides, the Board may act in its discretion with respect to executing and terminating management contracts during the Class "B" Control Period. Any management contract may, among other things, authorize the managing agent to act as the Association's agent with respect to the expenditure of Association funds within the scope of the approved Association budget; provided, the managing agent shall not be permitted to spend money in excess of the budget or reallocate greater than 10% of any budget line item without the Board's prior approval.

3.21. Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) the Association's cash accounts shall not be commingled with any other accounts;

(d) the managing agent shall accept no remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; the Association shall benefit from anything of value received;

(e) the managing agent shall disclose promptly to the Board any financial or other interest which it may have in any firm providing goods or services to the Association;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, the Board shall prepare financial reports for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be prepared within 60 days after the close of the fiscal year: (i) a balance sheet showing actual receipts and expenditures; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant. During the Class "B" Control Period, the annual report shall include certified financial statements.

The Association shall provide each Owner or its authorized agent a copy of the annual financial report within 10 business days following receipt of a written request for access. In addition, if Texas law requires, the Association shall send a copy of the annual report to each Member by mail or personal delivery within 90 days following the close of the fiscal year.

3.22. Borrowing.

At such time as neither Declarant nor any Declarant Affiliate owns any of the property described on Exhibit "A" or Exhibit "B" to the Declaration, the Association may borrow money for any legal purpose; provided, the approval of Members representing a majority of the votes in

the Association is required if the proposed borrowing is (a) for the purpose of making discretionary capital improvements; and (b) the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

During the time that Declarant or any Declarant Affiliate owns any of the property described on Exhibit "A" or Exhibit "B" to the Declaration, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent of Owners representing at least the Minimum Required Class "A" Vote. After the Class "B" Control Period terminates, no Mortgage lien may be placed on the Common Area, nor may assessments be pledged as security for any loan, without the approval of Owners representing at least the Minimum Required Vote and such other approval as the Declaration may require.

3.23. Right To Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within and outside of the Community.

3.24. Enforcement.

The Association may impose sanctions for any violation of the Governing Documents. To the extent the Declaration specifically requires, the Board shall comply with the following procedures and with Chapter 209 of the Texas Property Code, as amended, prior to imposition of sanctions:

(a) Notice. The Board or its delegate shall serve the alleged violator with written notice by certified mail, return receipt requested, describing (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than 30 days within which the alleged violator may present a written request for a hearing or a written commitment to cure the violation within a reasonable time to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless the alleged violator challenges the violation within 30 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided, the Board or Covenants Committee may suspend any proposed sanction if the violation is cured, or if a diligent effort is made to cure, within the 30-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If the alleged violator requests a hearing within the allotted 30-day period, the hearing shall be held before the Board or Covenants Committee. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Appeal.** Following a hearing before the Covenants Committee, the alleged violator shall have the right to appeal the decision to the Board. To exercise this right, the alleged violator must submit a written notice of appeal to the Association's manager, President, or Secretary within 10 days after being informed of the results of the hearing by the Association's manager or another Board officer or representative.

(d) **Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Article, if permitted under the Declaration and by applicable law, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the Declaration's dispute resolution procedures, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

3.25. Board Training Seminar.

The Board may provide or provide for seminars and continuing educational opportunities designed to educate and inform directors of their responsibilities as directors. Such programs may include instruction on applicable Texas corporate and fiduciary law principles, other issues relating to administering the Community's affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. The Board may require that each newly elected, and each re-elected director complete a training seminar within the first six months of assuming the director position.

3.26. Board Standards.

In performing their duties, directors and officers shall act as fiduciaries and are subject to insulation from liability as provided for directors of corporations by Texas law and as otherwise provided by the Governing Documents. Directors shall exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.

A director shall be deemed to have acted in accordance with the business judgment rule so long as the director:

(a) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(b) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, they are made on an informed basis;

(c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and

(d) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

A director acting in accordance with the business judgment rule shall be protected from personal liability. Unless the Governing Documents require that specific action be taken, the failure to take such specific action shall not, without further showing that the Board acted in violation of the business judgment rule, be deemed a violation of a Board duty.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

3.27. Conflicts of Interest; Code of Ethics.

Unless otherwise approved by a majority of the other directors, no Elected Director may transact business with the Association or an Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the directors relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members. The Board may void any contract which creates a prohibited conflict of interest.

Notwithstanding the above, the directors appointed by the Class "B" Member may be employed by or otherwise transact business with Declarant or any Declarant Affiliate, and Declarant and its Affiliates may transact business with the Association and its contractors.

The initial Board shall create and adopt a written "Code of Ethics" applicable to all directors and officers. The Code of Ethics shall incorporate the above standards and other conduct rules it deems appropriate. At a minimum, the Code of Ethics shall require each officer and director to conduct himself or herself in manner consistent with the Board Standards described in Section 3.26. Each officer and director, as a pre-condition to service, shall acknowledge and agree, in writing, to abide by the Code of Ethics. The Code of Ethics may not be amended without the approval of Owners representing at least the Minimum Required Vote.

Article IV: Officers

4.01. Officers.

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The officers may, but need not, be Board members, Owners, or residents of the Community. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.02. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each Association annual meeting. Officers shall serve until their successors are elected.

4.03. Removal and Vacancies.

Any officer may be removed by a vote of at least 2/3 of the other directors. The Board shall appoint a replacement to fill any vacancy in any office for the unexpired portion of the term.

4.04. Powers and Duties.

The Association's officers each shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall supervise the preparation of the Association's budget, but shall delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The Secretary shall prepare or supervise the preparation of meeting minutes as required by Texas law.

4.05. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

4.06. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other Association instruments shall be executed by an officer, unless the Board provides otherwise, or by such other person or persons as the Board may designate by resolution.

4.07. Compensation.

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.18.

Article V: Committees

5.01. General.

The Board may create such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. In an effort to encourage and incorporate a broad base of Owner and resident participation in community governance, it shall be the Association's policy that the Board create and delegate its responsibilities to committees as reasonably appropriate.

Committees shall exercise only such authority as granted by Board resolution, provided the Board may, in the exercise of its reasonable discretion, elect not to follow a committee's advice on any matter. Committees may not act without specific Board authority and may not bind the Association contractually or financially. Committee members may serve no more than two consecutive two-year terms on the same committee.

5.02. Covenants Committee.

The Board may appoint a Covenants Committee consisting of at least three members. The Covenants Committee members shall be Members of the Association who are not directors, officers, or employees of the Association or the spouse, parent, child, brother, or sister of a director, officer, or employee. Acting in accordance with the provisions of the Declaration, these By-Laws, and any Board resolutions, the Covenants Committee shall be the Association's hearing tribunal and shall conduct all hearings held pursuant to Section 3.24. The Board may not impose a fine without a majority vote of the Covenants Committee.

5.03. Intentionally Deleted.

5.04. Other Committees.

In addition to the above, at such time as Class "A" Members other than Builders own 50% of the Units anticipated for the Community under the Master Land Use Plan, or whenever the Class "B" Member earlier determines, the Board may create the following committees, each of which shall have at least three members:

(a) **Finance Committee.** The Finance Committee shall actively assist the Board, the Treasurer, and the Association's managing agent, if any, in preparing the Association's budget. After termination of the Class "B" Control Period, Board approval of the Association's budget shall be subject to the Finance Committee's review and comment, which shall be advisory only and shall not bind the Board.

(b) **Physical Maintenance Committee.** After termination of the Class "B" Control Period, the Physical Maintenance Committee shall preside over maintenance of the Common Maintenance Areas.

(c) **Dispute Resolution Committee.** The Dispute Resolution Committee shall be established to mediate disputes concerning the interpretation of Use Restrictions, rules, and other Governing Document provisions and to advise the Board on initiating litigation involving the Association (as provided in the Declaration); provided, the Dispute Resolution Committee shall not preside over matters relating to the collection of assessments or other fees and charges. Each member of the Dispute Resolution Committee shall attend a Board-approved course on dispute resolution.

(d) **Social Committee.** The Social Committee shall be established to actively assist the Board in creating, sponsoring and executing social events for the community with Board approval and support.

The Board shall establish by resolution the specific scope and limitations on the authority of the above committees. In the event that the Board elects not to create any of the committees listed above, the functions of each such committee shall be assumed by the Board.

Article VI: Miscellaneous

6.01. Fiscal Year.

The Association's fiscal year shall be the calendar year unless otherwise established by Board resolution.

6.02. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (the then current edition) shall govern the conduct of Association proceedings when not in conflict with Texas law or the Governing Documents.

6.03. Books and Records.

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Community as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing documents requested. Records shall be made available within 10 business days of the receipt of a written request by an Owner or his or her authorized agent.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

6.04. Notices.

Except as the Declaration or these By-Laws otherwise provide, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.05. Amendment.

(a) By Class "B" Member. During the Class "B" Control Period, the Class "B" Member unilaterally may amend these By-Laws. Thereafter, for so long as the Class "B" Member or any of its Affiliates owns any property described on Exhibit "A" or Exhibit "B" to the Declaration, the Class "B" Member unilaterally may amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. No amendment may adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) By the Board. Except as provided above, these By-Laws may be amended only by (i) the consent of Owners representing the Minimum Required Class "A" Vote, and (ii) the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

Article VII: Indemnification

7.01 Mandatory Indemnification; Directors or Officers Successful in Defense.

The Association must indemnify any person or the estate of any deceased person (such person or estate of any deceased person being hereafter throughout this Article referred to as "Person") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administration, arbitative, or investigative (hereafter throughout this Article collectively referred to as "Proceeding"), by reason of the fact that he is or was a director or officer of the Association or a member of a committee established pursuant to the Declaration or pursuant to these By-Laws,, or is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor,

trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, trust, sole proprietorship, employee benefit plan or other enterprise (hereafter throughout this Article collectively referred to as "Director") against expenses (including reasonable attorneys' fees) actually and reasonably incurred by him in connection therewith to the extent that he has been wholly successful on the merits or otherwise in defense of such Proceeding.

7.02 Indemnification; Whether Successful or Not in Defense.

(a) The Association must indemnify any present or former director or officer of the Association (or the estate of such a person) who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he is or was a Director, and the Association may indemnify any Person (other than a present or former director or officer of the Association (or the estate of such a person)) who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he is or was a Director or employee or agent of the Association, against expenses (including reasonable attorneys' fees) actually and reasonably incurred by him, and against judgments, penalties (including excise and similar taxes), fines, and amounts paid in settlement by him in connection therewith if he acted in good faith and in a manner he reasonably believed, in the case of conduct in his official capacity, as defined in Texas Non-Profit Corporation Act ("TNPCA") Article 1396-2.22A.A.(4) ("Official Capacity"), to be in the best interests of the Association; or, in all other cases, to be not opposed to the best interests of the Association; and, with respect to any criminal Proceeding, if he had no reasonable cause to believe his conduct was unlawful; provided, however, that if he is found liable to the Association or is found liable on the basis that personal benefit was improperly received by him, the indemnification provided pursuant to this Section 7.02 (i) is limited to expenses actually and reasonable incurred by him in connection with the Proceeding and (ii) may not be made in respect of any Proceeding in which he has been found liable for willful or intentional misconduct in the performance of his duties to the Association.

The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, will not, of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association or, with respect to any criminal Proceeding, that he had reasonable cause to believe that his conduct was unlawful. A Person will be deemed to have been found liable in respect to any claim, issue or matter only after the Person has been so adjudged by a court of competent jurisdiction after exhaustion of all appeals.

(b) Notwithstanding any other provisions of this Article, the corporation must indemnify any Person as to whom indemnification is mandatory under Sections 7.01 or 7.02(a) of this Article to the fullest extent then permitted by laws.

7.03 Indemnification Procedure.

Any indemnification under Section 7.02 of this Article (unless ordered by a court or made pursuant to a determination by a court) may be made by the Association only as authorized in the specific cause upon a determination that indemnification of the Person is proper under the circumstances because the Person has met the applicable standard of conduct set forth in Section 7.02. Such determination will be made:

(a) By a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the Proceeding;

(b) If such quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the Proceeding; or

(c) By special legal counsel selected by the Board of Directors or a committee of the Board by a vote as set forth in (a) or (b) immediately foregoing, or, if such a quorum cannot be obtained and such a committee cannot be established by a majority vote of all Directors.

7.04 Authorization of Payment.

(a) Authorization of indemnification and determination as to reasonableness of expenses will be made in the same manner as the determination that indemnification is permissible, except that if special legal counsel makes the latter determination, authorization of indemnification and determination as to reasonableness of expenses must be made:

(i) By a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the Proceeding; or

(ii) If such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the Proceeding; or,

(iii) If such a committee cannot be established, by a majority vote of all directors.

(b) Notwithstanding subsection (a) of this Section 7.04, payment of expenses actually and reasonably incurred by any Person as to whom indemnification is mandatory under Sections 7.01 or 7.02(a) of this Article will be deemed to be authorized provided that the standard of conduct necessary for indemnification under Section 7.02(a) of this Article is met.

7.05 Advancement of Expenses.

(a) Expenses incurred in defending such Proceeding may be paid by the Association in advance of the final disposition of the Proceeding, without any of the authorizations or determinations specified in Section 7.03 and 7.04 of this Article, upon receipt of a written affirmation by the Person of his good faith belief that he has met the standard of conduct necessary for indemnification under applicable law and a written undertaking by or on behalf of the Person to repay such amount unless it ultimately is determined that he is entitled to be indemnified by the Association as authorized in this section. The written undertaking must be an unlimited general obligation of the Person but need not be secured. It may be accepted without reference to financial ability to make payment.

(b) Provided that the written affirmation and undertaking described in Section 7.05(a) are received by the Association from a Person to be paid or reimbursed for expenses incurred and as to whom indemnification is mandatory under Sections 7.01 or 7.02(a) of this Article, such payment or reimbursement will be deemed to be authorized.

7.06 Other Rights.

The indemnification provided by these Bylaws may not be deemed exclusive of any other rights to which a Person seeking indemnification may be entitled under the Articles of Incorporation, these Bylaws, a resolution of directors, an agreement or otherwise both as to action in his Official Capacity and as to action in any other capacity, and will continue as to such Person after the termination of such capacity and will inure to the benefit of his heirs, executors and administrators; provided, however, that any provision for the Association to indemnify or to advance expenses to a director, whether contained in the Articles of Incorporation, these Bylaws, a resolution of directors, an agreement or otherwise, except in accordance with Section 7.07 of this Article, is valid only to the extent it is consistent with TNPCA Article 1396-2.22A, as limited by the Articles of Incorporation, if such a limitation exists.

7.07 Insurance.

The Association may purchase and maintain insurance on behalf of any Person by reason of the fact that he is or was serving at the request of the Association as a Director or employee or agent of the Association against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as a Person, whether or not the Association would have the power to indemnify him against such liability under TNPCA Article 1396-2.22A.

7.08 Other Arrangements.

In addition to the powers described in Section 7.07, the Association may purchase, maintain or enter into other arrangements on behalf of any Person who is or was a director, officer or trustee of the Association against any liability asserted against him and incurred by him in such capacity or arising out of his status as such a Person, whether or not the Association would have the power to indemnify him against such liability under TNPCA Article 1396-2.22A. If the other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the arrangement may provide for payment of a liability (with respect to which the Association would not have the power to indemnify the Person. Without limiting the power of the Association to procure or maintain any kind of arrangement, the Association may, for the benefit of Persons described in this Section 7.08, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Association; or (4) establish a letter of credit, guarantee, or surety arrangement.

7.09 Other Provisions Applicable to Insurance and Other Arrangements.

The insurance may be procured, maintained, or established with an insurer, or the other arrangement may be procured, maintained or established within the Association or with any insurer or other person considered appropriate by the Board of Directors. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement

will be conclusive and the insurance or other arrangement will not be voidable and will not subject the directors approving the insurance or other arrangement to liability, on any grounds, regardless of whether directors participating in the approval are beneficiaries of the insurance or other arrangement.

7.10 Severability.

In the event that any part or portion of this Article is judicially determined to be invalid or unenforceable, such determination will not in any way affect the remaining portions of this Article, but the same will be divisible and the remainder will continue in full force and effect. Notwithstanding any provision of this Article to the contrary, the Association shall not indemnify any person described in this Article if such indemnification (1) would jeopardize the Association's tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor statute (the "Code"), or (2) if the Association is determined to be a private foundation for federal income tax purposes, would cause the imposition of the federal excise tax for self-dealing under Section 4941 of the Code or for making a taxable expenditure under Section 4945 of the Code.

7.11 Appearance as a Witness or Otherwise.

Notwithstanding any other provision of this Article, the Association may pay or reimburse expenses incurred by a director, officer, or other person in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

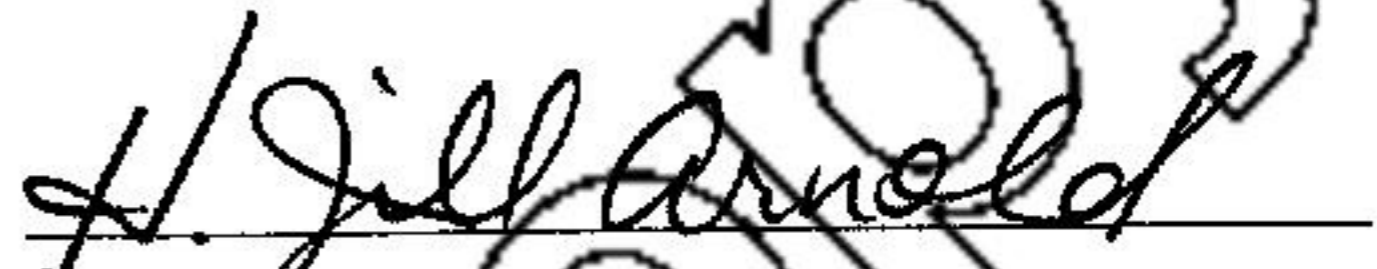
CERTIFICATION

I, the undersigned, do hereby certify:

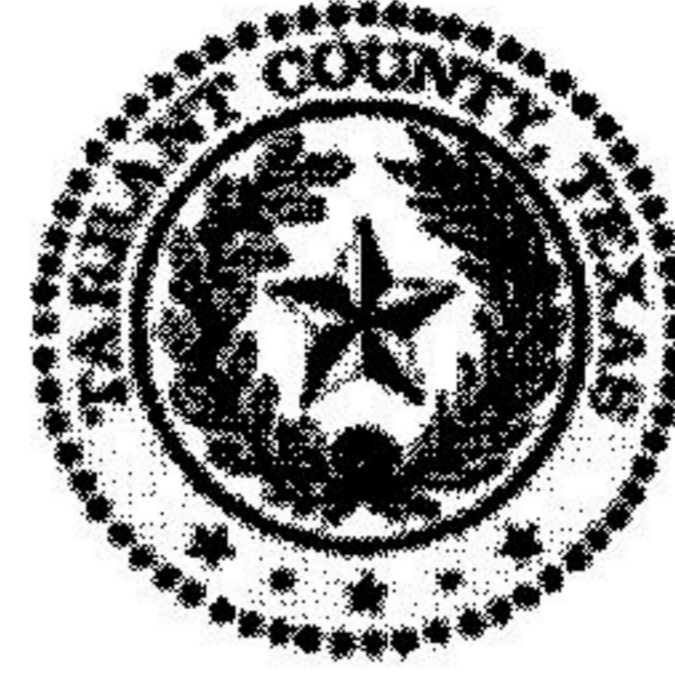
That I am the duly elected and acting Secretary of Mistletoe Hill Homeowners' Association, Inc., a Texas not-for-profit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 9th day of February, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ___ day of _____, 200__.


Secretary

Unofficial COPY



KELLY, HART & HALLMAN PC
ATTN CHAD A KEY
201 MAIN ST # 2500
FT WORTH TX 76102

Submitter: LAKE HOLLOW CORP

SUZANNE HENDERSON
TARRANT COUNTY CLERK
TARRANT COUNTY COURTHOUSE
100 WEST WEATHERFORD
FORT WORTH, TX 76196-0401

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By: _____



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OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR
RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.