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**DECLARATION OF COVENANTS, CONDITIONS, ASSESSMENTS,  
CHARGES, SERVITUDES, LIENS, RESTRICTIONS,  
RESERVATIONS AND EASEMENTS**

This **DECLARATION OF COVENANTS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESTRICTIONS, RESERVATIONS, AND EASEMENTS**, hereinafter referred to and defined as the "**Declaration**", is made on this 19th day of July, 1995, by Creekside Place, LLC, a Texas limited liability company, hereinafter referred to and defined as "**Declarant**".

**WITNESSETH:**

WHEREAS, Declarant is the owner of all that certain real property located in Tyler, Smith County, Texas, described as follows, to-wit:

All those certain lots, tracts, or parcels of land being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38, N.C.B. 1602, of the Ridgecreek Place Subdivision, and Lots 1, 2, 3, 4, 5, and 6, N.C.B. 1603, of the Ridgecreek Place Subdivision, according to the Plat of Ridgecreek Place Subdivision recorded in Cabinet C, Slide 131-A of the Plat Records of Smith County, Texas, all of said Lots being hereinafter collectively referred to and defined as the "**Property**";

WHEREAS, in order to enable Declarant to implement a general plan of development and accomplish the development of the Property as a high quality, restricted residential development in a consistent manner with continuity, and to insure the creation of an architecturally harmonious subdivision, Declarant desires to subject the Property to the covenants, conditions, assessments, charges, servitudes, liens, reservations, restrictions, and easements hereinafter set forth, all of which shall be hereinafter referred to and defined as the "**Covenants**";

WHEREAS, this general plan of development and the Covenants will benefit the Property in general, the parcels and lots that constitute the Property, the Declarant, and each successive owner of an interest in the Property; and

WHEREAS, in accordance with both the doctrines of restrictive covenant and implied equitable servitude, the Declarant desires to restrict the Property according to these Covenants in furtherance of this general development plan;

NOW, THEREFORE, it is declared that all of the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions.

**ARTICLE 1**

1.10 "Architectural Control Committee" shall mean Thomas Rudd, Linda Rudd, C. Noah Israel, M.D., Helen Israel, O.D. Shults, and Sherry Shults, or such other person or persons who shall be named to serve in conjunction with or as successor(s) to such persons by the Declarant; provided, however, that such change shall not be effective for purposes of this Declaration until a statement of such change has been duly recorded by the Declarant in the Real Property Records of Smith County, Texas. The Declarant reserves and shall have the sole and unilateral right at any time to change the membership of and the number of persons serving on the Architectural Control Committee. At such time as all of

the Lots shall be owned by Owners other than the Declarant, the composition of and membership of the Architectural Control Committee shall be determined by the Board as provided in Section 3.01 of this Declaration.

- 1.02. **"Assessable Property"** shall mean each of the Lots.
- 1.03. **"Association"** or **"Property Owners' Association"** means an incorporated association consisting of all Owners, which shall have the duty of maintaining, operating, and managing the Common Area as provided in this Declaration. Each Owner shall automatically become a member of the Association contemporaneously with acquiring a Lot, without any further documentation of any kind.
- 1.04. **"Board"** means the Board of Directors of the Association.
- 1.05. **"Common Area"** means the entire Property except the Lots, subject to all easements and rights described in this Declaration.
- 1.06. **"Covenants"** shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations, restrictions, and easements set forth in this Declaration.
- 1.07. **"Declarant"** means Creekside Place, LLC, a Texas limited liability company, and its successors and assigns, but with respect to any such successor or assign (i) such successor or assign shall not be deemed to be a "Declarant" unless such successor or assign is designated as such pursuant to a written instrument signed by Declarant (which written designation shall be filed of record in the Real Property Records of Smith County, Texas, designating that part of the Property to which it relates), and (ii) such successor or assign shall only have those rights and powers of Declarant that are specifically assigned to such successor or assign pursuant to such written designation.
- 1.08. **"Declaration"** shall mean this instrument of Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as existing on the date of its filing in the Real Property Records of Smith County, Texas and as it may hereinafter be amended as provided herein.
- 1.09. **"Deed"** shall mean a deed or other instrument conveying the fee simple title to all or any portion of the Property, including but not limited to a Lot.
- 1.10. **"Eveiling Unit"** shall mean a building, and any part or portion thereof, situated on a Lot designed and intended for use and occupancy as a residence by a single family.
- 1.11. **"Lot"** means any of the lots, tracts, or parcels of land shown on the Plat of the Property recorded in Cabinet C, Slide 131-A of the Plat Records of Smith County, Texas (the "Plat"), on which there is or will be built a single family dwelling. The term "Lot" does not include any of the Common Area that may be shown or described on the Plat.
- 1.12. **"Maintenance Charges"** shall mean any and all costs assessed pursuant to Article Six and Seven of the Declaration.
- 1.13. **"Owner"** means the record owner or owners of the fee simple title to any Lot or portion of a Lot. The term "Owner" excludes any person or person or entity or entities, having an interest in a Lot merely as security for the performance of an obligation or note. The term "Owner" shall include Declarant if Declarant is a record owner of a fee simple title to a Lot.

1.14. "Permanent Improvements" shall mean with respect to any Lot or any other portion or parcel of the Property, any and all improvements, structures, and other materials and things located thereon, including, but without limitation, trees, berms, shrubs, hedges, and fences, including such items as may only be located thereon temporarily.

1.15. "Plat" shall mean the plat of the Property presently of record in Cabinet C, Slide 131-A of the Plat Records of Smith County, Texas, and any other plat or plats of all or any portion of the Property hereinafter filed for record in the Plat Records of Smith County, Texas, including, without limitation, amendments to the Plat as originally filed and any resubdivisions of the Property filed in the Plat Records of Smith County, Texas.

1.16. "Property" shall mean all of the real property shown or described on the Plat.

1.18. "Subdivision" shall mean the residential subdivision located in Smith County, Texas, and known as the "Ridgecreek Place Subdivision" according to the Plat as the same may be amended, supplemented, or resubdivided from time to time.

1.19. "Subdivision Lien" shall mean the lien imposed upon each Lot in the Subdivision as provided in Article Seven of this Declaration.

## ARTICLE 2

2.01. Property Bound. From and after the date of recordation of this Declaration, the Property, and each Lot, shall be subject to the Covenants, and the Covenants shall run with, be for the benefit of, bind, and burden the Property.

2.02. Owners Bound. From and after the date of recordation of this Declaration, the Covenants shall be binding upon and shall inure to the benefit of each Owner, and the heirs, executors, administrators, personal representatives, successors, and assigns of each Owner, whether or not so provided or otherwise mentioned in the Deed. Each Owner, for the Owner and the heirs, executors, administrators, personal representatives, successors, and assigns of the Owner, hereby expressly agrees to pay, and to be personally liable for, the assessments provided for in this Declaration with respect to each Lot in which the owner owns any interest, and to be expressly bound by all of the Covenants.

## ARTICLE 3

3.01. Architectural Control Committee Membership. The Architectural Control Committee shall serve at the pleasure of the Declarant until such time as all of the Lots have been sold and conveyed by Deed to Owners other than the Declarant. At such time as title to all of the Lots is in Owners other than the Declarant, the Architectural Control Committee shall serve at the pleasure of the Board as shall be provided in the By-Laws of the Association. Notwithstanding anything contained in this Declaration to the contrary, no appointment of any member of the Architectural Control Committee shall be effective until designation of such appointment has been filed for record in the Real Property Records of Smith County, Texas by the Declarant or by the authorized representative of the Board, as applicable.

3.02. Reservation of Architectural Control. The Declarant, desiring to provide for the preservation of the values and amenities in and upon the Property and to subject the Property to the reservation of architectural control

hereinafter expressed for the purpose of implementing a general plan of development for the Property to insure the creation of a high quality, highly-restricted, architecturally harmonious residential subdivision, which general plan of development and reservation of architectural control is for the benefit of the Property, each Lot, and each Owner of an interest in any Lot, as well as for the benefit of the Declarant as developer of the Property, hereby reserves the right and all rights to approve or disapprove, in the sole and exclusive discretion of the Architectural Control Committee, as to:

(a) compliance with any specific restrictions imposed by Declarant, the Architectural Control Committee, or anyone acting of behalf of either the Declarant or the Architectural Control Committee, with respect to the Property, or any part thereof, and each Lot; and

(b) harmony of external design, location and landscaping in relation to surrounding Dwelling Units and other structures and topography which now or hereafter may be existing or proposed, including, without limitation, architectural designs, setbacks, landscaping, construction materials and color schemes, and all subdivisions, resubdivisions (where permitted), exterior additions to, changes in, construction or alteration or excavation of the Property, or any part thereof, or of any Lot, or any part thereof (including trees, bushes, and shrubs), and any and all Dwelling Units, structures, or improvements located thereon, either permanent or temporary, including, without limitation, additions to, changes in, or alterations of grade, landscaping, hedges, screening materials, planters, roadways, walkways, driveways, signs, exterior lighting, walls, retaining walls, fences, buildings, or other structures or improvements of any size or character located thereon which any person or entity, including governmental and quasi-governmental entities or agencies, seeks to commence, erect, place, or maintain upon the Property, or any part thereof, or any Lot, or any part thereof.

3.03. Request For Approval. All requests for approval of the above shall be submitted in writing to the Architectural Control Committee at 6708 Hollytree Circle, Tyler, Texas 75703, or at such other address as may from time to time be designated of record in the Property Records of Smith County, Texas, and shall be accompanied by complete and specific plans and specifications showing the nature, kind, shape, elevations, height, materials, color, location, landscaping, and other material attributes of the Dwelling Unit, structure, improvement, addition, change, alteration or excavation of the Property, or any part thereof. All such requests for approval shall also be accompanied by the payment, in tender acceptable to the Architectural Control Committee, of an Application Fee as shall be set by the Architectural Control Committee from time to time in its sole discretion. The Architectural control committee shall have no duty to exercise the power of approval or disapproval hereby reserved.

3.04. Delegation of Architectural Authority. With respect to the Property, or any part thereof, and all Lots, without assigning, transferring or conveying any interest in the Property, or any part thereof, or any of the Lots, Declarant hereby and does herein and hereby delegate the power of approval and disapproval herein reserved to the Architectural Control Committee. This delegation of the power of approval and disapproval may be rescinded at any time by the Declarant by the filing of any instrument so stating such act of rescission. In the Real Property power of approval and disapproval is in effect, any person or entity owning any interest in the Property, or any part thereof, or any Lot, or any part thereof (where permitted), shall be required to deal with the Architectural Control Committee, and not the Declarant, and the Declarant shall have no responsibility or liability of any nature whatsoever for the actions of the Architectural Control Committee.

3.05. Prior Approval Required. No Dwelling Unit, landscaping, building, fence, wall, sign, exterior light, or other structure or apparatus, either permanent or temporary, and either for new construction or for remodel or additions, shall be commenced, erected, placed, or maintained upon any Lot constituting a portion of the Property, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision, or resubdivision thereof, including without limitation changes in or alteration of grade, landscaping, roadways, and walkways, be made until the plans and specifications showing the nature, kind, shape, height, materials, color, location, and other material attributes of the same shall have been submitted in writing to and approved in writing by the Architectural Control Committee as to (i) compliance with the Covenants herein contained, and (ii) harmony of external design and location in relation to surrounding structures and topography which are now or hereafter existing or proposed, including, but not by way of limitation, as to architectural designs, setbacks, landscaping, color schemes and construction materials. The Architectural Control Committee shall have the right to promulgate a form for all such submissions. In the event the Architectural Control Committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been properly submitted to it, approval will be deemed to have been granted. Non-exercise of the power hereby reserved by Declarant in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in other or different instances. Likewise, approval of any one set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications. In the absence of gross negligence or willful misconduct attributable to the Architectural Control Committee, such Architectural Control Committee shall not be liable for the improper enforcement or failure to exercise any of the powers reserved and delegated unto said Architectural Control Committee pursuant to this Article. In no event shall any approval obtained from an Architectural Control Committee pursuant to the terms of this Article be deemed to be a representation of any nature regarding the structural integrity or safety or engineering soundness of the structure or other item for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations, nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval.

3.06. Standard For Review. The Architectural Control Committee shall review applications for proposed work in order to (i) ensure conformity of the proposal with these covenants, conditions, and restrictions and (ii) ensure harmony of external design in relation to surrounding structures and topography. An application can be rejected for providing insufficient information. The Committee shall have broad, unilateral, and discretionary authority to interpret and apply these standards. In rejecting an application, the Committee should detail the reasons for rejection and suggest how the applicant could remedy the deficiencies. In granting an approval, or denying any approval, or making any other decision required of the Architectural Control Committee as provided in this Declaration, the Architectural Control Committee may grant such approval, withhold such approval, deny consent, or make any other decision as the Architectural Control Committee shall in its sole discretion desire, whether or not such action may be construed or deemed to be unreasonable or not. All decisions of the Architectural Control Committee shall for all purposes be deemed to be final. Each Owner by accepting a Deed to a Lot expressly waives any and all rights to challenge or appeal the decisions of the Architectural Control Committee.

3.07. Variations. The Declarant expressly grants the right to the Architectural Control Committee to grant to an Owner a variance or variations from these Covenants. Upon granting a variance or variations to any Owner, the Architectural Control Committee may, but shall not be required to, place evidence of such variance or variations of record in the Real Property Records of Smith

County, Texas. Notwithstanding anything contained in this Declaration to the contrary, upon the recording of any variance by the Architectural Control Committee in accordance with the terms of this Section 3.07 of this Declaration, this Declaration shall automatically and for all purposes be deemed to have been amended to include such variance or variances as part of the Covenants.

#### ARTICLE 4

4.01. Residential Purposes Only. All Lots shall be used for single-family residential purposes only. However, Declarant, and its agents, as well as any other person engaged in the construction and sale of Dwelling Units on the Property, shall have the right, during the construction and sales period, to use facilities as may be reasonably necessary or convenient for its business purpose of constructing and selling residences on the Property.

4.02. Single Family Use Only. No Dwelling Unit or other building or structure of any kind shall be erected, altered, or permitted on any Lot other than one (1) detached single-family dwelling. Each Dwelling Unit shall have a private garage as provided in §4.04, below.

4.03. Dwelling Unit Area and Construction. All Dwelling Units constructed on a Lot must have a ground floor area of not less than three thousand (3,000.0) square feet, exclusive of open or covered porches, terraces, patios, driveways, carports, and garages. The exterior walls of any residence shall consist of not less than seventy-five percent (75.0%) brick, brick veneer, stone, stone veneer, masonry construction and approved by the Architectural Control Committee. The Architectural Control Committee's approval of one type of exterior construction material or design for one Lot shall not in any manner be deemed to be an approval of the same or similar exterior construction material or design for any other Lot, and the Architectural Control Committee may refuse to approve a plan for construction on any Lot notwithstanding the approval of the same or similar plan for construction on any other Lot in the Subdivision. All roofs shall be constructed of fireproof materials which shall be acceptable to the Architectural Control Committee. Any wood shingles approved by the Architectural Control Committee and used in connection with the construction of a Dwelling Unit must be of a fire resistant nature and must be coated periodically as determined by the Architectural Control Committee so as to assure resistance to fire. All exterior colors, textures, and materials must, in the opinion of the Architectural Control Committee, be compatible not only with this specified design criteria but also compatible with adjacent and surrounding Lots, and over-all Subdivision appearance.

4.04. Garages. All garages constructed on a Lot shall be (i) a part of the Dwelling Unit, (ii) attached to a Dwelling Unit by a breezeway, or (iii) otherwise approved in writing by the Architectural Control Committee prior to the beginning of construction of the Dwelling Unit on a Lot. All garages shall be fully enclosed unless otherwise approved in writing by the Architectural Control Committee prior to the beginning of construction of the Dwelling Unit on a Lot. No garage may be enclosed or otherwise occupied or used as part of the residential dwelling. Garages may not be used for other than storage and parking vehicles without the written consent of the Architectural Control Committee.

4. Building Setback Lines. No Dwelling Unit, building, structure, or permanent improvement shall be located on any Lot nearer to any boundary line than the minimum building setback lines shown on the Plat. The building setback lines shown on the Plat shall not, however, be binding upon the Architectural Control Committee, and the Architectural Control Committee shall have the right to, unilaterally without amendment to this Declaration, permit a change in the setback line on any Lot in the Subdivision when, in the sole opinion of the Architectural Control Committee, it is deemed and determined to be advisable to

permit such change. The provisions of this §4.05 expressly grant to the Architectural Control Committee the right to require that any Dwelling Unit, building, or other structure be set back further than the minimum setback lines shown on the Plat.

4.06. Resubdivision. No Lot shall be resubdivided in any manner without the prior written consent of the Architectural Control Committee. Any person owning two or more adjoining Lots may utilize such separate, adjoining Lots for one building site with the privilege of constructing one Dwelling Unit on the separate, adjoining Lots, subject to the approval of the Architectural Control Committee; provided, however, the each of the two or more adjoining Lots utilized for the one building site shall remain separate, individual Lots and shall not be resubdivided into one Lot. Notwithstanding anything contained in this Declaration to the contrary, subject to the approval of all appropriate governmental agencies having jurisdiction over the Subdivision and any lot, the Declarant hereby reserves the sole and unilateral right at any time while the Declarant is the Owner of any Lot to subdivide or resubdivide, as the case may be, and/or to plat or replat, as the case may be, all or any portion of any Lot or Lots without the consent of any other Owner.

4.07. Easements, Rights-of-Way, and Streets. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. No utility company, water district, political subdivision, or other authorized entity using these easements shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, flowers, or to other property of the Owner situated in any easement. The streets as located and shown on the Plat shall be private streets owned by the Association. The Association shall have the responsibility for the maintenance and upkeep of all streets shown on the Plat, and each Owner shall be liable for the Owner's pro rata share of assessments for street maintenance and upkeep as provided in this Declaration.

4.08. Maintenance of Lots. If an Owner of any Lot fails to maintain the premises in a neat and orderly manner, the Architectural Control Committee shall have the right, through its agents and employees, to enter upon the Lot in order to repair, maintain, and restore the Lot, including landscaping, and the exterior of any buildings and other improvements located on the Lot, all at the expense of the Owner. Any and all such expenses incurred by or on behalf of the Architectural Control Committee shall for all purposes be conclusively deemed and considered to be charges subject to the Subdivision Lien defined in Section 7.01 of this Declaration.

4.09. Noxious Activities. No noxious or offensive activity shall be conducted on any Lot that may be or may become an annoyance or nuisance to the neighborhood.

4.10. Prohibited Uses. No building, structure, or other property of any nature whatsoever which has not been approved for residential use by the Architectural Control Committee, including but not limited to trailers, mobile homes, motor homes, basements, tents, shacks, garages, and other outbuildings and accessory structures, shall be allowed to be used or placed upon any Lot or any street in the Subdivision at any time, either temporarily or permanently.

4.11. Signs. No signs of any type shall be allowed on any Lot except one sign of not more than five (5) square feet advertising the property for sale. However, the Declarant, as well as any other person engaged in the construction of Dwelling Units on the Property shall have the right, during the construction period only, to erect and maintain one sign of not more than five (5) square feet advertising the construction of a Dwelling Unit.

4.12. Mineral Development. No Owner shall grant any right to or consent to any (i) oil well drilling, development, or refining, or (ii) any mineral quarrying or mining operations of any kind on any Lot. No Owner shall grant any right for or consent to any oil well, tank, tunnel, mineral excavation, or shaft to be erected, maintained, or permitted on any Lot. No Owner shall grant any right for or consent to any derrick or other structure designed for use in boring for oil, natural gas, or other minerals to be erected, maintained, or permitted on any Lot.

4.13. Trash Disposal. No rubbish, garbage, or trash shall be placed or allowed to remain at the exterior of any Dwelling Unit except in containers meeting the specifications of the Declarant or the Architectural Control Committee. The placement, maintenance, and appearance of all such containers shall be subject to rules and regulations of the Architectural Control Committee. There shall be no burning or other incineration of trash, garbage, leaves, brush, or other debris on any Lot at any time.

4.14. Landscaping at Intersections. No fence, wall, hedge, or shrub planting that in the sole opinion of the Architectural Control Committee obstructs sight lines at any vehicular intersection in the Subdivision shall be placed or permitted to remain on any Lot in the Subdivision.

4.15. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose. The Architectural Control Committee shall have the sole right and authority to determine (i) whether or not an animal is a "household pet" for the purposes hereof, and (ii) what number of household pets constitutes a reasonable number for the purposes hereof.

4.16. Vehicular Parking Restriction. No truck, bus, motor home, recreational vehicle, motorcycle, boat trailer, or other trailer shall be left parked in the street in front of or adjacent to any Lot, except for construction and repair equipment while a Dwelling Unit is being built or repaired in the immediate vicinity. No truck, bus, motor home, recreational vehicle, motorcycle, boat trailer, or other trailer shall be parked on the driveway or any portion of a Lot in such manner as to be visible from the street without first having obtained the written consent of the Architectural Control Committee to do so, which consent may be withheld for any reason.

4.17. Prohibited Activities. Except for an Owner conducting an estate sale or garage sale on a non-regular basis with the prior written approval of the Architectural Control Committee, no professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot.

4.18. Tenants. No poles, masts, antennas, or satellite dishes of any type, size or height shall be installed on any Lot without the written consent of the Architectural Control Committee, which consent may be withheld for any reason.

4.19. Storage. No exterior storage of any items of any kind shall be permitted on any Lot without the prior written consent of the Architectural Control Committee, which consent may be withheld for any reason.

4.20. Motor Vehicles. The operation of any and all motorized vehicles within or upon the Property at any and all points in the Subdivision shall be subject to such rules and regulations as shall from time to time be established by the Architectural Control Committee.

4.21. Misuse of Lot. No Lot shall be maintained or utilized in such a manner as to (i) present an unsightly appearance to, (ii) unreasonably offend

the morals of, (iii) constitute a nuisance or unreasonable annoyance to, or (iv) endanger the health of other Owners, as determined in the sole discretion of the Architectural Control Committee.

4.22. Violation of Laws. No Lot shall be maintained or utilized in such a manner as to violate any applicable statute, ordinance, or regulation of the United States of America, the State of Texas, the County of Smith, Texas, or the City of Tyler, Texas, or any other governmental or quasi-governmental agency or authority having jurisdiction over any Lot.

4.23. Violation of Covenants. No Lot shall be maintained or utilized in violation of any part of this Declaration or of the rules and regulations of the Architectural Control Committee or the Board.

4.24. Construction Equipment. No construction equipment of any kind shall be driven upon, parked, stored, placed, or otherwise in any manner located upon any street in the Subdivision after 7:00 P.M. No trailer, other storage vehicle, or other storage apparatus of any kind upon which any construction equipment of any kind is loaded, placed, stored, or otherwise located shall be driven upon, parked, stored, placed, or otherwise in any manner located upon any street in the Subdivision after 7:00 P.M. Each Owner shall be responsible for requiring their contractors, subcontractors, agents, employees, representatives, and any other persons acting through any Owner or on any Owner's behalf to comply with these restrictions. If an Owner fails to require their contractors, subcontractors, agents, employees, representatives, and any other persons acting through any Owner or on any Owner's behalf to comply with the restrictions set forth in this Section 4.24, the Architectural Control Committee shall have the right, through its agents and employees, to require compliance or to have such construction equipment, trailer, other storage vehicle, or other storage apparatus moved from the Subdivision, all at the expense of the Owner. Any and all such expenses incurred by or on behalf of the Architectural Control Committee shall for all purposes be conclusively deemed and considered to be charges subject to the Subdivision Lien defined in Section 7.01 of this Declaration.

#### ARTICLE FIVE

5.01. Easements. All streets, rights-of-way, and easements for the installation and maintenance of streets, utilities, and drainage facilities are reserved as shown on the Plat. No shrubbery, fence, or other obstruction shall be placed in, on, or over any easement or right-of-way. Right of use for ingress and egress shall be available at all times over any dedicated easement or alleyway for purposes of installing, operating, maintaining, repairing, or removing any utility. Any obstruction placed in such easement or alleyway that would interfere with the installation, maintenance, operation, or removal of such utility.

5.02. Underground Utilities. An underground distribution system for electricity, gas, sewer, telephone, and cable TV shall be installed to serve all Lots in the Subdivision. The Owner of each Lot, at the Owner's cost, shall furnish, install, and maintain (all in accordance with the requirements of local governmental authorities and the National Electrical Code) an underground service cable and appurtenances from the meters installed on the Lot by the various utility companies or other companies providing such services to such point as may be designated by the applicable company or the Architectural Control Committee on the property line of the Lot. The company furnishing the said utility service shall make the necessary connection at the property line and at the meter. Each Owner, at the Owner's cost, shall install, furnish, and maintain a meter (in accordance with then-current standards and specifications of the utility or other company) for the Dwelling Unit constructed on the Lot. For as long as underground service is maintained, the utility services to each Lot shall be

uniform in character as determined in the sole discretion of the Architectural Control Committee.

#### ARTICLE SIX

6.01. Creation of Association. The Owners shall constitute the Association. Each Owner of a Lot, including the Declarant, shall automatically be a member of the Association. Association membership shall be appurtenant to ownership of a Lot. Ownership of a Lot is the sole criterion for membership in the Association. The Declarant may, in the Declarant's sole discretion, incorporate the Association at the expense of the Association in accordance with the laws of the State of Texas.

6.02. Resubdivision of Lots. If an Owner resubdivides a Lot into one or more Lots in accordance with the provisions of Section 4.06 hereof, subsequent to such resubdivision, the Owner shall be issued one membership in the Association for each additional Lot created by the resubdivision. If an Owner owning two or more adjoining Lots utilizes such separate, adjoining lots for one building site as provided in Section 4.06 hereof, the Owner shall continue to own a separate membership for each Lot utilized for or as part of the building site and shall continue to be responsible for and pay all such dues and assessments as shall be allocable to each separate Lot owned by the Owner.

6.03. Transfer of Membership. Association membership can be transferred only to the grantee of a conveyance of a Lot in fee. Membership shall not be assigned, pledged, or transferred in any other way. Any attempt to make a prohibited transfer shall be void. There shall only be one (1) membership per Lot. If there are more than one Owner of any Lot, the Owners of such Lot shall determine how their one (1) vote shall be cast when voting on Association matters. No membership vote may be split into fractions for voting purposes as each membership is entitled to only one (1) vote.

6.04. Management. Until such time as (i) title to all of the Lots is in Owners other than the Declarant, or (ii) the resignation of the Declarant as the manager of the Association, the Association shall be managed solely by the Declarant, and (b) no Owner of membership shall be entitled to vote on any matter of any nature whatsoever regarding the Subdivision or the Association. After title to all of the Lots is in Owners other than the Declarant, the Association shall be managed by the Owners and each Lot shall be entitled to one (1) vote on Association and subdivision matters as provided in §6.02, above, and as shall be provided in the Association's By-Laws, subject to this Declaration.

6.05. Meetings and Conduct of Business. As provided above, each Owner shall have one vote. There shall be at least one meeting of the membership each year. At the meeting, the Owners shall elect a Board as provided by the Association's By-Laws, vote on any other matters the Board chooses to place before the membership, and discuss any matter of Association business that the Board or any Owner wishes to bring before the entire membership.

6.06. Duties of the Board. (i) Until such time as title to all of the Lots is in Owners other than the Declarant, through the Declarant or the Architectural Control Committee, either jointly or independently, and (ii) after such time as title to all of the Lots is in Owners other than the Declarant, through the Board, the Association shall have the following powers and duties:

- (a) To adopt rules and regulations to implement this Declaration and the Association's By-Laws;
- (b) To enforce this Declaration, the By-Laws, its rules and regulations;

- (c) To elect officers of the Board and select members of the Architectural Control Committee when that power devolves to the Board;
- (d) To delegate its powers to committees, officers, or employees;
- (e) To prepare a balance sheet and operating income statement for the Association and deliver a report to the membership at its annual meeting;
- (f) To establish and collect regular assessments to defray expenses attributable to the Association's duties, to be levied against each Lot, including the Declarant;
- (g) To levy fines or other charges against Owners for violation of the Covenants or for the Owner's failure to comply with any action of the Declarant, the Architectural Control Committee, or the Board;
- (h) To establish and collect special assessments for capital improvements or other purposes;
- (i) To levy fines against and file liens against Owners because of nonpayment of charges or assessments duly levied and to enforce on those liens;
- (j) To charge interest on any amounts charged, levied, or fined by the Declarant, the Architectural Control Committee, or the Board at an annual rate not exceeding the maximum rate of interest that may be lawfully charged in such cases for such charges, levies, or fines;
- (k) To receive complaints regarding violation of this Declaration, the By-Laws, or the rules and regulations;
- (l) To hold hearings to determine whether to discipline Owners who violate this Declaration, the By-Laws, or the rules and regulations;
- (m) To give reasonable notice to all Owners of all annual meetings of the membership and all disciplinary hearings;
- (n) To hold regular meetings of the Board at least quarterly;
- (o) To manage and maintain all of the streets, rights-of-way, easements, and Common Area in the Subdivision in a state of high quality and in good repair, and to establish and collect regular and special assessments against each Lot for the payment of such management and maintenance;
- (p) To pay taxes and assessments that are or could become a lien on the Common Area or any part thereof;
- (q) To pay the costs of any liability insurance and fire insurance on the Common Area and any liability insurance for members of the Board;
- (r) To take any and all such other action and to levy such assessments or charges as shall be deemed by the Board to be reasonably necessary for the maintenance and well-being of the Subdivision; and
- (s) To determine what type, if any, of security service or system should be used in the Subdivision for the safety and protection of the residents of the Subdivision.

## ARTICLE SEVEN

7.01. Imposition of Assessment Lien and Priority. Each Lot shall be subject to a continuing servitude in the form of the right and authority of the Declarant, the Architectural Control Committee, and the Board, acting either jointly or independently, to impose a lien at any time after the date of recordation of this Declaration for any regular assessments, special assessments, levies, fines, or other charges, and any interest accrued thereon, court costs, and attorney's fees as provided for in Article Six of this Declaration. Except as provided below in §7.02, such lien, hereinafter referred to as the "**Subdivision Lien**," against each such Lot shall be first and superior to any and all other charges, liens, or encumbrances which hereafter in any manner may arise and be imposed upon any Lot, except that such lien shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior.

7.02. Subordination of Subdivision Lien. The Subdivision Lien shall be subordinate only to any first mortgage lien held by, or deed of trust of which the beneficiary is, an institutional lender which is chartered (or licensed) by the United State of America or any state within the United States of America. Sale or transfer of any Lot shall not affect the priority of or otherwise affect the Subdivision Lien; provided, however, that if the sale or transfer of the Subdivision Lien is pursuant to foreclosure of any such superior mortgage lien or deed of trust lien, or pursuant to any sale or proceeding in lieu thereof, when such sale is to such institutional lender, the purchaser in good faith at the mortgage lien foreclosure or deed of trust trustee's sale, or such institutional lender taking by deed in lieu of foreclosure, shall take the Lot free of the Subdivision Lien for all assessments, fines, levies, and other charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure. Upon the date of issuance of a sheriff's deed or trustee's deed or deed in lieu of foreclosure in compliance with the terms of this §7.02, the Subdivision Lien shall immediately become and remain superior to any and all other charges, liens, or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior and except to the extent stated herein with respect to any subsequent first lien financing), and such mortgage or deed of trust foreclosure sale purchaser or grantee in lieu of foreclosure shall take the Lot subject to all assessments, fines, levies, and other charges and any Subdivision Lien thereafter accruing subsequent to the date of the issuance of the sheriff's deed or trustee's deed or deed in lieu of foreclosure.

7.03. Owner's Agreement. Each Owner, for said Owner, and the Owner's heirs, executors, administrators, personal representatives, successors, and assigns, covenants and agrees:

(a) That the Owner acquires the Owner's Lot subject to all assessments, fines, levies, and other charges and rights of the Declarant, the Architectural Control Committee, and the Board to determine and levy all assessments, fines, levies, and other charges against the Owner and the Owner's Lot as they may exist from time to time;

(b) That by accepting a Deed to a Lot, the Owner is, shall be, and shall remain personally liable for any and all assessments, fines, levies, and other charges which may be levied or imposed by virtue of the terms of this Declaration against the Owner and/or the Owner's Lot while the said Owner is (or was) the Owner thereof regardless of whether the Covenants or Agreements are expressed in such Deed and regardless of whether the said Owner signed the Deed; and

(c) That (i) by and in consideration of accepting a Deed to a Lot, and (ii) to secure Owner's performance hereunder, and (iii) to secure payment

of all amounts secured by the Subdivision Lien hereunder, the Owner conveys the Lot, and all portions thereof, to the Architectural Control Committee in trust, with a power of sale, and warrants and agrees to defend the title to the said Lot, and all portions thereof. If the Owner pays all of the assessments, fines, levies, and other charges imposed against the Owner or the Lot as provided in this Declaration in accordance herewith, including any attorney's fees and interest related thereto, this conveyance in trust shall have no further effect. If the Owner fails to pay any of the assessments, fines, levies, and other charges imposed against the Owner or the Lot as provided in this Declaration in accordance herewith, the Architectural Control Committee in its capacity as trustee shall have the right to nonjudicially foreclose upon the Subdivision Lien granted herein in accordance with and upon compliance with the provision of §51.002 of the Texas Property Code, as the same may be amended or supplemented from time to time.

7.04. Enforcement of Subdivision Lien. Unless expressly otherwise provided in this Declaration, (i) until such time as title to all of the Lots is in Owners other than the Declarant, the Declarant or the Architectural Control Committee, either jointly or independently, and (ii) after such time as title to all of the Lots is in Owners other than the Declarant, the Board of the Architectural Control Committee, either jointly or independently, shall have the right to enforce the provisions of this Declaration. However, if such persons or entities shall fail or refuse to enforce this Declaration or any part hereof, for an unreasonable period of time after written request from the Owner to do so, then any Owner may enforce the provisions of this Declaration, which are not enforceable only by the Declarant, the Architectural Control Committee, or the Board, at the said Owner's sole cost and expense by any appropriate action, and neither the Declarant, the Architectural Control Committee, or the Board shall have any liability for failing or refusing to enforce this Declaration to any Owner or other person or entity.

7.05. Remedies. If the Owner of any Lot fails to pay any assessment, fine, levy, or other charge imposed pursuant to any provision of this Declaration, or to pay any interest accrued thereon, or to pay any other charges associate therewith or related thereto (including court costs and attorney's fees) incurred in collecting same, the Declarant, the Architectural Control Committee, or the Board, as applicable, shall and does have the right and authority to enforce the payment of the assessments, fines, levies, and other charges imposed pursuant to the provisions of this Declaration, including interest, court costs, and attorney's fees, and/or enforce the Subdivision Lien by taking either or both of the following actions, concurrently or separately, jointly or independently, (and by exercising either of the remedies hereinafter set forth, the Declarant, the Architectural Control Committee, or the Board, as applicable, does not prejudice their exercise of any other remedy):

(a) Bring an action at law and recover judgment against the Owner personally obligated to pay such amounts; or

(b) Enforce the Subdivision Lien against the Lot by any means available at law or in equity, including without limitation a nonjudicial foreclosure sale of the Lot, such sale to be conducted in the manner set forth in §51.002 of the Texas Property Code, the same may be amended or supplemented from time to time. The Declarant, or any Owner, or any other person or entity, without limitation, may be the purchaser at any such foreclosure sale.

8.01. Enforcement. The Declarant, the Architectural Control Committee, the Board, or any Owner, as applicable shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations imposed by this Declaration. Failure to enforce any covenant or restriction shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. All waivers must be in writing and signed by the party to be bound.

8.02. Severability. Invalidation of any one of the Covenants or restrictions by judgment, or court order, or otherwise shall in no way affect any other covenant, restriction, or provision, and all other covenants, restrictions, and provisions shall remain in full force and effect.

8.03. Binding Effect. These easements, restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the Property. Consequently, they shall run with the real property and shall be binding on all parties having any right, title, or interest in the property in whole or in part, and their heirs, successors, and assigns. These easements, covenants, conditions, and restrictions shall be for the benefit of the Property, each Lot, and each Lot Owner.

8.04. Term. The covenants, conditions, and restrictions of this Declaration shall be effective for a term of twenty-five (25) years from the date this Declaration is recorded, after which period the covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years subject to termination by an instrument signed by more than seventy (70) percent of the Owners.

8.05. Amendment. Until such time as title to all of the Lots is in Owners other than the Declarant, the Declarant shall have the sole and unilateral power and authority to amend this Declaration and the Covenants upon any such manner and basis as the Declarant shall determine in the sole opinion of the Declarant to be in the best interests of the Subdivision. After such time as title to all of the Lots is in Owners other than the Declarant, this Declaration may be amended only by the affirmative vote of seventy (70) percent of the Owners as evidenced by an instrument signed by such Owners and recorded in the Real Property Records of Smith County, Texas. Neither any amendment nor any termination shall be effective until recorded in the Real Property Records of Smith County, Texas, and all requisite governmental approvals, if any, have been obtained.

8.06. Costs and Attorney's Fees. If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.

8.07. Liberal Construction. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Property.

8.08. Right To Inspect. The Declarant and the Architectural Control Committee and the Board, jointly and severally, shall have the right to enter on all lots at all reasonable times for the purpose of inspecting whether or not the Owner thereof is in compliance with the terms of this Declaration and the Covenants. If during the course of construction of a Dwelling Unit, the Declarant or the Architectural Control Committee, jointly or severally, determines in his/their/its sole discretion that there is a violation of the Covenants, the Declarant or the Architectural Control Committee, or both, as appropriate, may order a discontinuance of the construction of such Dwelling Unit until such time as corrective measures have been taken to assure full compliance

with the Covenants, and an Owner's failure to immediately discontinue or cause the discontinuance of construction of the Dwelling Unit, upon demand by Declarant or the Architectural Control Committee, shall constitute a further violation of this Declaration by that Owner.

8.09 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run of the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) if applicable, those of the issue of Thomas Rudd and C. Noah Israel who are living at the time the period of perpetuities starts to run on the challenged interest.

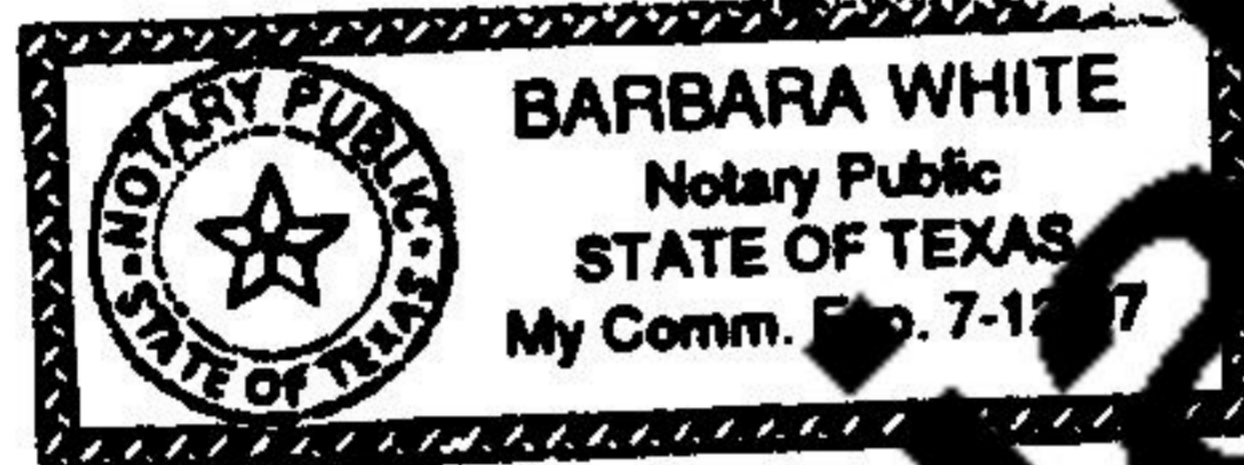
IN WITNESS WHEREOF, this Declaration is executed this 19th day of July, 1995 in Tyler, Smith County, Texas.

CREEKSIDE PLACE, LLC

BY: Thomas Rudd  
THOMAS RUDD, Manager

STATE OF TEXAS  
COUNTY OF SMITH

This instrument was acknowledged before me on the 19th day of July, 1995, by Thomas Rudd, Manager of Creekside Place, LLC, a Texas Limited Liability Company, on behalf of said Limited Liability Company.



Barbara White  
NOTARY PUBLIC, STATE OF TEXAS

My commission expires: \_\_\_\_\_

Filed for Record in:  
SMITH COUNTY, TEXAS  
MARY MORRIS - COUNTY CLERK

On Jul 31 1995  
At 11:01am

Deputy - Janis Farrell

WHEN RECORDED RETURN TO

Mr. William Sheehy  
Wilson Law Firm  
315 East Fifth Street  
Tyler, TX 75701

STATE OF TEXAS COUNTY OF SMITH  
I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the Land Records of Smith County, Texas.



JUL 31 1995

MARY MORRIS  
COUNTY CLERK, Smith County, Texas  
By Stacy Eudry Deputy

File\Mont\Shultz\ Ridgecrk.Res

Ridgecreek Place Subdivision  
Declaration of Covenants - Page 15

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