

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR THE ESTATES AT NORTH RICHLAND HILLS

Unofficial Copy

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE ESTATES AT NORTH RICHLAND HILLS (the "**Declaration**") is made effective as of the 24th day of March, 2003, by WESTERN RIM INVESTORS 2001-3, L.P., a Texas limited partnership hereinafter referred to as "**Declarant**").

BACKGROUND STATEMENT

Declarant is the owner of certain real property in Tarrant County, Texas, which is more particularly described on Exhibit "A" attached hereto and made a part hereof (the "**Property**").

Declarant intends to develop on the Property a development to be known as The Estates at North Richland Hills (hereinafter referred to as the "**Development**"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property within the Development by the recording of this Declaration and amendments thereto in the Real Property Records of Tarrant County, Texas. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Development. Declarant also desires to establish a method for the administration, maintenance, preservation, use and enjoyment of the property subject to this Declaration as provided herein.

Declarant has caused the Association (as hereinafter defined) to be formed as a Texas non-profit corporation to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to this Declaration, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The Covenants, Conditions and Restrictions set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, and such Owner's heirs, grantees, distributees, legal representatives, successors, and assigns, as applicable, and to the benefit of the Association.

Declarant hereby adopts and establishes the following Covenants, Conditions and Restrictions to apply to the use, improvement, occupancy and conveyance of all the Property, including the roads, avenues, streets, alleys and waterways therein to the extent provided herein; and each contract or deed which may be hereafter executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following (regardless of whether or not the same are set out in full or by reference in said contract or deed).

ARTICLE I
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

- 1.01 "**Apartment Unit**" shall mean one individual unit within the apartment project on the Multi-Family Tract.
- 1.02 "**Assessments**" shall mean assessments of the Association.
- 1.03 "**Association**" shall mean The Estates at North Richland Hills Homeowners' Association, Inc., a Texas non-profit corporation organized under the Texas Non-Profit Corporation Act, its successors and assigns.
- 1.04 "**Board**" shall mean the Board of Directors of the Association.
- 1.05 "**Builder**" shall mean any party purchasing a Lot directly from Declarant.
- 1.06 "**Bylaws**" shall mean the Bylaws of the Association which may be adopted by the Board, as the same are from time to time amended.
- 1.07 "**City**" shall mean the City of North Richland Hills, Texas.
- 1.08 "**Common Property**" means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners, as set out in **Article II** herein.
- 1.09 "**Commencement Date**" shall mean the date which is six months after the first Lot has been sold by Declarant to a Builder.
- 1.10 "**Declarant**" shall mean Western Rim Investors 2001-3, L.P., a Texas limited partnership qualified to do business in the State of Texas, and its designated successors and assigns, provided any such successors or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the Property, and provided further, in the instrument of conveyance to any such successor or assign, such successor or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided further, upon such designation of successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time; provided further, that any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant thereunder.
- 1.11 "**Declaration**" shall mean this instrument as it may be amended from time to time.

1.12 **"Improvement" or "Improvements"** shall mean every Structure (as hereinafter defined) and all appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, patios, garages, surface parking areas, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning equipment, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.13 **"Lot"** shall mean a single-family lot within the Single-Family Tract and shown as a separate Lot on the Plat; provided, however, no portion of the Common Property shall ever be a Lot except as provided in **Section 2.05**.

1.14 **"Lot Owner"** shall have the meaning set forth in the definition of "Owner" below.

1.15 **"Member"** shall mean any member of the Association, including the Multi-Family Tract Owner.

1.16 **"Membership"** means the collective total of all Members of the Association.

1.17 **"Multi-Family Tract"** shall mean that portion of the Property designated as Lot 2, Block D of the Plat, upon which an apartment project is to be developed and Apartment Units leased.

1.18 **"Multi-Family Tract Owner"** shall have the meaning as set forth in the definition of "Owner" below.

1.19 **"Occupant(s) of the Apartment Units"** shall mean any person(s) occupying all or any portion of the Apartment Units for any period of time, regardless of whether such person(s) is a tenant, guest or owner of such Apartment Units.

1.20 **"Owner"** shall mean (i) the record owner (including Declarant), whether one or more persons or entities, of fee simple title to any Lot (such owner to be referred to herein as a **"Lot Owner"**) and (ii) the owner of the Multi-Family Tract (such owner to be referred to herein as the **"Multi-Family Tract Owner"**).

1.21 **"Plat"** shall mean that certain approved subdivision plat for The Estates at North Richland Hills, recorded in Cabinet A, Slide 7954 of the Plat Records of Tarrant County, Texas.

1.22 **"Property"** shall mean the land described on **Exhibit "A"** attached hereto (including the Single-Family Tract and Multi-Family Tract).

1.23 **"Residence"** shall mean a Structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A Structure situated on a Lot shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a prerequisite to the occupancy of such Residence and until the Lot and Structure located thereon shall have been conveyed to a third party other than the Builder thereof unless the Builder intends to use the Structure as his or her primary residence. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a certificate of occupancy for the Residence.

1.24 "**Restricted Multi-Family Area**" shall mean that portion of the Multi-Family Tract affected by the Multi-Family Set Back Restrictions (as discussed in **Section 5.11**). The Restricted Multi-Family Area is shown on Exhibit "B" attached hereto.

1.25 "**Restrictions**" shall mean all covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.26 "**Single-Family Tract**" shall mean that portion of the Property designated as (i) Lots 1-49, Block A; (ii) Lots 1-50, Block B; (iii) Lots 1-13, Block C; and (iv) Lot 1, Block D of the Plat, upon which Lots are located and Residences are to be constructed pursuant to the Development.

1.27 "**Structure**" shall mean:

(a) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, dock, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this **Section 1.27** applies to such change.

1.28 "**The Estates at North Richland Hills Restrictions**" shall mean this Declaration the same may be amended from time to time.

ARTICLE II COMMON PROPERTY

2.01 Conveyance of Common Property.

(a) The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association and in accordance with this **Section 2.01**, real and personal property for the common use and enjoyment of the Owners and Occupants of the Apartment Units (such real and personal property is hereinafter collectively referred to as "**Common Property**"). The Association hereby covenants and agrees to accept from the Declarant all such conveyances of Common Property.

(b) It is contemplated by the Declarant that the Declarant will convey to the Association Common Property for access, ingress and egress of both vehicular traffic and pedestrians, as well as for landscaping and security purposes as shown on Exhibit "C" attached hereto. The Declarant may, at

Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property (or the use to be made thereof) contemplated to be conveyed to the Association in accordance with this **Section 2.01(b)** at any time prior to conveyance of such Common Property to the Association.

(c) In addition to the property described in **Section 2.01(b)**, the Declarant may convey to the Association in accordance with this **Section 2.01** such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

2.02 Right of Enjoyment. Every Owner and Occupant of the Apartment Units shall have a right and easement to use the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot or Apartment Unit upon transfer or lease thereof; provided, however, that no Owner or Occupant of the Apartment Units shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners and Occupants of the Apartment Units. The Association may permit persons who are not Owners or Occupants of the Apartment Units to use part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this **Section 2.02** is subject to suspension by the Association as provided in **Sections 2.03(e)** and **3.05**.

2.03 Rights of The Association. The rights and privileges conferred in **Section 2.02** hereof shall be subject to the right, and where applicable, the obligation, of the Association acting through the Board to:

(a) promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

(b) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed of trust, mortgage or other security interest any or all of the Association's property including Common Property and revenues from Assessments, user fees and other sources; and provided, however, that, during the period when the Declarant has the right to appoint members of the Board, the Association shall not grant or convey to anyone any mortgage, deed of trust or other security interest on or in Common Property constituting real estate without approval by Declarant and a two-thirds (2/3) vote of the Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association;

(c) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

(d) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a two-thirds (2/3) vote of the

Members who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the Bylaws of the Association, cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

- (e) suspend, pursuant to **Section 3.05**, the voting rights of any Member and the right of enjoyment granted or permitted by **Section 2.02**;
- (f) sell, lease or otherwise convey all or any part of its properties and interests therein;
- (g) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof; and
- (h) maintain any and all landscaping treatments previously installed by the Declarant, to the extent that such landscaping is not otherwise maintained by the appropriate county and/or municipal entity having jurisdiction over the roads for Tarrant County, Texas.

2.04 Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved property, leasehold, easement or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all of its Members.

2.05 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of the Members, be used for any different purpose or purposes without the prior written consent of the Declarant.

2.06 Delegation of Use. Any Owner or Occupant of the Apartment Units may delegate to the members of his family or his tenants who reside on a Lot or in an Apartment Unit, in accordance with the Bylaws, his right to use and enjoy the Common Property.

2.07 Maintenance and Other Common Expenses. The Association shall maintain and keep in good repair the Common Property including, without limitation, all landscaping and Improvements situated on the Common Property. In addition to the maintenance of the Common Property, the Association shall have the obligation to maintain, repair, and replace, subject to any insurance then in effect, any other property Declarant designates as a maintenance obligation of the Association by an amendment to this Declaration. In addition, the Association shall maintain, repair, and replace, to the extent permitted by the applicable governmental authority, subject to any insurance then in effect, all grass, trees, shrubbery or other plantings, sidewalks, fences, walls, street lights, benches, trash receptacles, sprinkler systems, information and directional signage, security gates, traffic signals and any other landscaping or improvements located along or in dedicated right-of-ways and which were installed by Declarant. Further, the Association shall bear the responsibility for all utility charges incurred because of street lights, security gates, and sprinkler systems which are installed on or about the Common Property, and shall pay all insurance premiums attributable to or connected with any portion of the Common Property. The Association shall also have the

right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Development, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit Owners.

ARTICLE III
THE ESTATES AT NORTH RICHLAND HILLS HOMEOWNERS' ASSOCIATION

3.01 Purposes, Powers and Duties of The Association. The Association shall be formed as a non-profit corporation for the sole purpose of performing certain functions for the common good and general welfare of the residents of the Development. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the Members. To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a Texas non-profit corporation organized under the Texas Non-Profit Corporation Act, and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

3.02 Membership in the Association. Every Owner shall automatically be a member of the Association and such membership shall terminate only as provided in this Declaration. For purposes of voting, there shall be three (3) classes of Members as set forth in **Section 3.03**.

3.03 Voting Rights.

(a) The Multi-Family Tract Owner shall be a Class A Member and shall be entitled to one (1) vote per Apartment Unit located within the Multi-Family Tract. The Occupants of the Apartment Units shall not be Members of the Association or have any voting rights unless any such Occupant of the Apartment Units is also the Multi-Family Tract Owner.

(b) Each Lot Owner, with the exception of Declarant, shall be a Class B Member and shall be entitled to one (1) vote per Lot owned by such Lot Owner. Where such Lot Owner is a group or entity other than one individual person, the vote on behalf of such Lot Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.

(c) The Declarant shall be the sole Class C Member (in addition to its status as a Class A Member as the Multi-Family Tract Owner) and shall be entitled to one (1) vote for each Lot owned by Declarant; provided, however, in no event shall the Class C Member have less than the total number of Class B votes plus one (1). The Class C Membership shall cease and be converted to Class B Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to **Section 3.08** below.

3.04 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in the Bylaws of the Association.

3.05 Suspension of Membership Rights. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) shall be subject to the Right of Abatement, as defined in **Section 8.02**, by reason of having failed to take the reasonable steps to remedy a violation or breach of the Restrictions within thirty (30) days after having received notice of the same pursuant to the provisions of **Section 8.02** hereof;

(b) shall be delinquent in the payment of any Assessment levied by the Association pursuant to the provisions of **Article IV** hereof; or

(c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property.

Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in **Section 3.05(c)** above, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot or the Multi-Family Tract, as applicable.

3.06 Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

3.07 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the Membership of the Association shall be governed by this Declaration, the Texas Non-Profit Corporation Act, the Articles of Incorporation of the Association, and the Bylaws of the Association, as each shall from time to time be in force and effect.

3.08 Control by Declarant.

(a) Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the exclusive right to appoint and remove any member of the Board of the Association and any officer or officers of the Association and select and appoint any Management Company (as hereinafter defined) until fifteen (15) days after the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of the recording of this Declaration; (ii) the date upon which all of the Lots within the Single-Family Tract have been conveyed by Declarant to Lot Owners other than a person or persons constituting Declarant; or (iii) the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant; provided, however, that the Owners shall be entitled to elect certain members of the Board of the Association in accordance with the terms of the Bylaws of the Association which shall not be removable by the Declarant acting alone.

(b) Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this **Section 3.08**, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Lots and/or the Multi-Family Tract, and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the

Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this **Section 3.08**. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.09 Delegation. Notwithstanding anything herein to the contrary, any part or all of the duties of the Association may be delegated by the Association to a property management company ("Management Company") (as selected by the Declarant, pursuant to Section 3.08 above or, after Declarant's control rights under Section 3.08 cease, then by vote of a majority vote of the Members who are present in person or by proxy at a meeting of the Members) which Management Company may be an affiliate of Declarant (including WRPS, LP) and Association shall pay a reasonable fee to such Management Company for the performance of such duties.

ARTICLE IV ASSESSMENTS

4.01 Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot or any portion of the Multi-Family Tract, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) to timely pay to the Association the Annual Assessments (as hereinafter defined) which may or shall be levied by the Association pursuant to this Declaration against the Lots and the Multi-Family Tract after the Commencement Date;

(b) to timely pay to the Association any Special Assessments (as hereinafter defined) for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against the Lots and the Multi-Family Tract after the Commencement Date;

(c) that there is hereby created a continuing charge and lien (sometimes referred to herein as the "Association Lien") upon the Lots and the Multi-Family Tract against which all such Assessments are made to secure payment of such Assessments and any interest thereon as provided in **Section 4.09** hereof and costs of collection including reasonable attorneys' fees;

(d) that such Association Lien on the Lots and the Multi-Family Tract binds the Lots and the Multi-Family Tract in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon the Lots or the Multi-Family Tract whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed of trust or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots or the Multi-Family Tract (together with any and all Structures which may from time to time be placed or located thereon), and (2) to finance the construction repair or alteration of Structures. A

person or entity acquiring a lien or encumbrance on a Lot or the Multi-Family Tract after this Declaration is recorded shall acknowledge, by the act of filing an instrument creating such lien, that such lien or encumbrance is inferior to the continuing lien for the charge and lien provided for herein, whether or not such acknowledgment is specifically stated in the instrument creating the lien or encumbrance, except as provided by subsections (i) and (ii) above. Notwithstanding anything herein to the contrary, and without limitation to subsections (i) and (ii) above, Declarant has the full and unfettered right to obtain interim construction financing and/or permanent mortgage financing and refinancings thereof (collectively, "**Mortgage Financing**") encumbering the Multi-Family Tract and/or other portions of the Property prior to a conveyance thereof by Declarant to third parties ("**Mortgaged Property**"), and the above described Association Liens against such Mortgaged Property shall be fully subordinate to the rights of any third party lender ("**Lender**") extending such Mortgage Financing and the liens against the Mortgaged Property in connection therewith and to all extensions, renewals, modifications, consolidations, and replacements of such Mortgage Financing. Any foreclosure against the Mortgaged Property under the security instruments securing such Mortgage Financing shall foreclose and terminate all Assessment Liens against the Mortgaged Property for Assessments which have accrued through the date of foreclosure, and any purchaser at the foreclosure sale shall take title to the Mortgaged Property free and clear of all rights under such Assessment Liens.

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or the Multi-Family Tract from liability for any Assessment thereafter assessed;

(f) that all Annual Assessments, Special Assessments and Specific Assessments (as hereinafter defined) (together with interest thereon as provided in **Section 4.09** of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or the Multi-Family Tract during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or the Multi-Family Tract as provided in **Section 4.01(c)** of this Declaration) a personal obligation which will survive any sale or transfer of the Lot or the Multi-Family Tract owned by him; provided, however, that such personal obligation for delinquent Assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor; and

(g) failure to pay any Assessment when due shall constitute a default of the Owner's obligations hereunder, and shall entitle the Association to exercise the remedies provided under the terms of this Declaration.

4.02 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the residents of the Development, including, but not limited to, security, the acquisition, construction, improvement, maintenance, insuring, and equipping of Common Property, maintenance of private driveways or other Improvements or landscaping which are designated by Declarant to be maintenance obligations of the Association, the enforcement of the Restrictions contained in this Declaration, the payment of operating costs and expenses of the Association including, without limitation, any ad valorem real and personal property taxes on any real and personal property owned by the Association, and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to

the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 Annual Assessment.

(a) Beginning on the Commencement Date and continuing thereafter for the year immediately following the Commencement Date and each year thereafter, each Lot and the Multi-Family Tract shall be subject to an annual Assessment ("**Annual Assessment**") calculated as follows: (i) the Annual Assessment against each Lot shall be equal to Operating Costs (as hereinafter defined) *multiplied* by 2/3 *multiplied* by 1/108 (Operating Costs x 2/3 x 1/108), (ii) the Annual Assessment for the Multi-Family Tract shall be equal to Operating Costs *multiplied* by 1/3 (Operating Costs x 1/3); provided, however, in the event that the Commencement Date falls on a day other than January 1, the Annual Assessment for such year shall be prorated so that each Lot Owner and the Multi-Family Tract Owner pay an Annual Assessment proportional to the number of days remaining in the calendar year. The words "**Assessment Year**" as used herein shall mean the calendar year, with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association to the contrary, Operating Costs shall not contain (and no amount will be included in any Annual Assessment) any amounts in connection with Apartment Common Areas (as hereinafter defined) or Apartment Operating Costs (as hereinafter defined) (collectively, the "**Multi-Family Costs**"). "**Apartment Common Areas**", as that term is used herein, shall mean any property used in common by the Occupants of the Apartment Units and which exclusively serves the Multi-Family Tract. "**Apartment Operating Costs**", as that term is used herein, shall mean the costs to operate the Apartment Units on the Multi-Family Tract and the cost of providing the Occupants of the Apartment Units various amenities, security service and other services which by their nature are for the exclusive benefit of the Occupants of the Apartment Units and which are not intended to benefit other Owners in the Development. Multi-Family Costs shall include, without limitation, (i) costs of security, acquisition, construction, improvement, maintenance, insuring, and equipping of Apartment Common Areas (including maintenance of private driveways or other Improvements or landscaping constituting Apartment Common Areas); (ii) the enforcement of the Restrictions contained in this Declaration against Occupants of the Apartment Units by the Multi-Family Tract Owner; (iii) any ad valorem real and personal property taxes on any real and personal property constituting Apartment Common Areas; and (iv) the payment of all principal and interest when due on all debts owed by the Multi-Family Tract Owner in connection with the Apartment Common Areas. No Lot Owner may use any of the Apartment Common Areas and no part of the Apartment Common Areas shall be conveyed to or accepted by the Association as Common Property. The Multi-Family Tract Owner shall be responsible for any and all Multi-Family Costs. For so long as Declarant has the right to appoint and remove Directors and Officers of the Association under Section 3.08, the aggregate Annual Assessment against all Lots and the Multi-Family Tract shall not be reduced below \$46,656.00 without the express written consent of Declarant.

(b) Commencing with the first Assessment Year and continuing thereafter, the Operating Costs and resulting Annual Assessment may be increased at any time and from time to time during each Assessment Year by Declarant; provided, however, such increase shall not be more than twenty percent (20%) above the Operating Costs and resulting Annual Assessment for the previous Assessment Year without a vote of the Membership as provided below, and the Annual Assessment for the first full Assessment Year shall not exceed (i) \$31,104.00 in the aggregate for all Lots and (ii) \$15,552.00 for the Multi-Family Tract.

(c) Commencing with the first Assessment Year and continuing thereafter, the Annual Assessment for each Assessment Year may at any time and from time to time be increased more than twenty percent (20%) above the maximum Annual Assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association and this Declaration.

4.05 Special Assessments. In addition to the Annual Assessments authorized by this **Article IV**, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments ("**Special Assessments**") for the purpose of paying, in whole or in part, any unanticipated Operating Costs, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property or on any private drives designated by Declarant to be a maintenance obligation of the Association ("**Special Costs**"). Such Special Assessments may be levied by the Board in any Assessment Year without the approval of the Members (provided, however, that such Special Assessments in the aggregate do not exceed an amount equal to the Annual Assessment then in effect). Special Assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association and this Declaration. Such Special Assessments shall be calculated by allocating such Special Costs to Lots (other than Lots owned by Builder) and the Multi-Family Tract in the same manner as Operating Costs are allocated under **Section 4.04** for Annual Assessments.

4.06 Assessment Procedure.

(a) The Board shall establish the Annual Assessment for each Assessment Year at an amount not in excess of the maximum Annual Assessment as determined by the provisions of this **Article IV**, and shall also establish the date during the Assessment Year on which the Annual Assessment shall be due and payable (such date is hereinafter referred to as the "**Due Date**"). The Board shall also establish an annual budget which shall list the estimated operating costs ("**Operating Costs**") and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs will be covered by Special Assessments. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the Annual Assessment and the Due Date. The Annual Assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the Annual Assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any Special Assessments for capital improvements which may be levied in accordance with the provisions of this **Article IV**.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to **Section 4.04(c)** and **Section 4.05** of this **Article IV**. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second

meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

4.07 Uniform Rate of Assessment. Both Annual and Special Assessments must be assessed in a uniform manner for all Lots and the Multi-Family Tract as set forth above.

4.08 Contribution by Declarant. For so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, Declarant shall not be liable for the payment of any Assessments; provided, however, during said period Declarant shall have the right, but not the obligation, to advance funds to the Association sufficient to satisfy the deficit, if any, between the actual Operating Costs of the Association (but specifically not including an allocation for the reserve allowance), and the sum of Annual, Special and Specific Assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

4.09 Effect of Non-payment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of (i) the highest legal rate of interest which can be charged, or (ii) the rate of eighteen percent (18%) per annum, or (iii) at such rate as the Board may from time to time establish; provided, however, in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Texas. In the event of default in the payment of any one or more installments of an Assessment, the Board may declare any remaining balance of the Assessment at once due and payable. In the event that any Owner shall fail to pay fully any portion of any Assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot or the Multi-Family Tract (as applicable) enforceable in accordance with the provisions of this Declaration.

4.10 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all Assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot or the Multi-Family Tract owned by said Owner as of the date of such certificate, or that all Assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

4.11 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no Special Assessment shall be made without the approval of Declarant for so long as Declarant has the right to appoint Officers and Directors of the Association.

4.12 Specific Assessments. The Board shall have the power to specifically assess any Owner (other than Builder) pursuant to this **Section 4.12** as, in its discretion, it shall deem appropriate (such Assessments to be referred to herein as "**Specific Assessments**"). Failure of the Board to exercise its authority under this **Section 4.12** shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this **Section 4.12** in the

future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this **Section 4.12**. The Board may levy Specific Assessments against any Owner (other than Builder) for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all of the Residences which are benefited according to the benefit received; and
- (b) Reasonable fines as may be imposed in accordance with the terms of this Declaration and the Bylaws.

ARTICLE V
GENERAL COVENANTS AND RESTRICTIONS

5.01 Application. The covenants and restrictions contained in this **Article V** shall pertain and apply to all Lots and to all Structures erected or placed thereon, but shall only apply to the Multi-Family Tract if expressly so stated.

5.02 Restriction of Use. All Lots (and Residences thereon) within the Single-Family Tract shall be restricted to single family residential use. All buildings, Residences, Structures, and other Improvements erected, altered, or placed on a Lot shall be of new construction, and no structure of a temporary character, trailer, mobile home, tent, shack, garage, barn, or outbuilding shall be used on a Lot at any time as a Residence, either temporarily or permanently. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other non-residential purposes. No duplexes or other attached housing for more than one dwelling unit shall be erected on any Lot.

Temporary structures and model homes may be used as building offices and other related purposes by Declarant or a Builder who is currently constructing homes for resale within the Property. No Builder shall be allowed to maintain an office or model home for the purpose of the sale of homes unless said Builder is conducting an active sales program within the Property and not for the purpose of sales in other subdivisions outside of the Property.

5.03 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Notwithstanding the foregoing, nothing herein shall prevent Declarant or a Lot Owner from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter; and, provided further, that the Lot Owner shall be responsible for Annual and Special Assessments based upon the number of Lots combined into one Lot.

5.04 Erosion Control. Other than Builder's normal construction activities in connection with constructing single-family residences, no activity which may create erosion or siltation problems shall be undertaken on any Lot; but, in all cases Builder must at all times comply with all applicable erosion control requirements, including, but not limited to, all applicable City, county and state erosion control requirements.

5.05 Landscaping. Lot Owners shall be required to sod the front yard and all rear and side yards which are visible from a street with a permanent, heat tolerant grass (i.e. Bermuda or St. Augustine grass). No "desert style" landscaping, rock covered yards, or other stone yard cover will be allowed. Lot Owners must install a front yard underground irrigation system and plant at least three trees in the front yard with a caliper meeting or exceeding minimum requirements of the City. The street-facing side yards or corner Lots shall also be irrigated and Lot Owners shall install sod as provided above. Lot Owners must plant at least one tree in the rear yard of a Lot with a caliper meeting or exceeding minimum requirements of the City. All irrigations systems and sodding required pursuant to the above provisions shall be completed prior to the resale of a Lot by a Builder to any third party purchaser.

Landscaping shall be completed not later than sixty (60) days after: (i) final inspection by the City of North Richland Hills, Texas, building inspector and/or the Tarrant County building inspector as may be applicable, or (2) occupancy of a Residence, whichever is earlier; provided, however, the irrigation systems and sodding shall be completed within the time period provided above. The Builder shall be responsible for providing and installing landscaping as required in this covenant as a part of his contract with the homebuyer. Notwithstanding the preceding sentence, should the Builder not complete the proper landscaping before the closing of the sale of the Residence to the homebuyer, said homebuyer (Lot Owner) shall be responsible for completing landscaping according to this provision.

5.06 Existing Trees. No tree having a diameter of three (3) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot.

5.07 Temporary Buildings and Prefabricated Structures. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes. Temporary structures and model homes may be used as building offices pursuant to the provisions of **Section 5.02**. Prefabricated or factory built structures shall not be permitted within the Property except as a temporary office used by a builder, and such manufactured units shall not be employed as elements in the construction of Structures affixed to Lots or Residences within the Property.

5.08 Outbuildings. No metal storage outbuildings shall be erected, placed or maintained upon any Lot in the Property. No tree house or children's playhouse shall be permitted on any Lot in the Development. Outbuildings or other Structures, temporary or permanent, other than the Residence or garage shall be limited to eight feet (8') in height. Any other type of permitted outbuilding must be in keeping with the overall character and aesthetics of the Residence located on the Lot. Any outbuilding will be required to be constructed with material and of a design that is compatible with the design of the Residence. All playground and recreational equipment shall be placed at the rear of a Lot. No outbuilding or play structure will be permitted to be placed on easements; be located nearer than five feet (5') to an interior side line of the Lot; or forward of the front building line.

5.09 Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sale" sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and, provided, further, that if, at the time of any desired use of such sign, the Association is making "For Sale" signs available for the use of Lot Owners, the signs made available by the Association must be used;
- (iii) directional signs for vehicular or pedestrian safety;
- (iv) any sign required by any governmental authority having appropriate jurisdiction;
- (v) temporary signs. (i.e., garage, lawn sales, etc.);
- (vi) reasonably sized and customary to the marketplace signs by Builders in the Development advertising their Lots or Residences for sale; and
- (vii) signs placed by the Multi-Family Tract Owner to promote the leasing of available Apartment Units and/or the name of the owner or manager of the apartments on the Multi-Family Tract, applicable phone numbers for such persons, lease rates, special promotional offers, directions to such apartments and other pertinent information related to the marketing and operation of the apartments on the Multi-Family Tract ("**Apartment Promotional Signs**").

(b) In no event, during approved construction of any Structure, shall there be more than one job identification sign.

(c) All "for rent" or "for lease" signs are prohibited on any Lot within the Single-Family Tract, but Apartment Promotional Signs may be reasonably placed on the Common Property.

(d) The number of temporary signs permitted under Section 5.09(a)(v) above must be kept to a minimum and may be put up no sooner than 24 hours in advance of a sale. Signs must be removed promptly after a sale has ended.

(e) No sign may be placed on the Common Property or the entrance areas to the Development (other than Apartment Promotional Signs).

5.10 Setbacks. Building area set backs shall be within the recommended building lines indicated on the Plat of the Property and as specified in any applicable City of North Richland Hills, Texas subdivision ordinance (hereinafter referred to as a "**Subdivision Ordinance**"). In no event shall the setbacks be less than those required by a Subdivision Ordinance unless a variance is granted by the appropriate governmental authority. No Structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

5.11 Multi-Family Set Back Restrictions. The Multi-Family Tract Owner shall be prohibited from constructing on the Restricted Multi-Family Area any buildings, structures or other improvements greater in height than a standard two-story building; provided, however, such restriction shall not apply to any other portion of the Multi-Family Tract.

5.12 Retaining Walls and Fences. No fence shall be constructed in violation of any applicable ordinances, laws, rules, regulations, or the provisions of the Plat establishing the Development.

Retaining walls shall be masonry on the front and all side Lot areas between the Residence and any adjacent streets. Retaining walls may be of other materials in the rear and side Lot areas where masonry is not required. The masonry retaining walls shall match or be compatible with the exterior materials on the Residence.

Fences and screening may be used within the Property to define private spaces or to attract or to divert attention to or from particular views. Certain objects which may be fenced or screened include; (1) free standing utility apparatus, e.g. transformers, switching equipment, etc.; (2) exterior, ground level machinery, e.g. heating and air conditioning equipment; (3) outside storage and service areas for equipment and supplies; and (4) refuse containers and related storage areas.

Acceptable methods of screening are as follows: (1) Earth banks and berms which shall have a maximum slope of 2:1 and be covered with plant material; (2) landscaping planting screens, hedges, etc.; (3) masonry walls or other materials which would be compatible with the approved retaining walls; (4) decorative iron; or (5) fencing.

General guidelines for fences shall include: (1) no fence shall be constructed more than 6' above grade in height on a Lot or more than 8' above grade in height on the Multi-Family Tract; (2) landscape planting as an integral component; (3) no woven metal or chain link fences will be allowed except as a small area pet enclosure (i.e. dog run), such pet enclosures to be screened by privacy fencing from direct view from the street as well as other fencing and/or plant materials; and (4) no fence which completely blocks vision shall be constructed except where the need for privacy is evident or where approved by Declarant.

5.13 Roads and Driveways. No road or driveway shall be constructed in violation of any applicable ordinances, laws, rules, regulations, or the provisions of the Plat establishing the Development. Driveways shall be constructed with concrete or other hard surface material such as paving stones or brick that is compatible with the overall landscape flatwork scheme. Existing trees, topography and landscape planning should be taken into consideration and where possible driveways should curve.

5.14 Antennae, Etc. No antennae, satellite dish, or electronic device of any type shall be placed on any Residence, Structure or Lot so as to be visible from a public street, Common Property or another Residence. No antennae shall be installed or used for the purpose of transmitting of electronic signals.

5.15 Clotheslines, Garbage Cans, Etc. All clotheslines, equipment, garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring residences and streets, and may be maintained in the rear yard on a Lot only.

5.16 Maintenance. Lot Owners shall maintain the same and adjacent street right-of-way, and the improvements, sod, trees, hedges, and plantings thereon, in a neat and attractive condition. Such maintenance shall include regular mowing, edging of turf areas, weeding of plant beds, fertilizing, weed control and watering of the turf and landscape areas on each Lot. Diseased or dead plants or trees must be removed and replaced within a reasonable time frame. On front lawns and wherever visible from any street, there shall be no decorative appurtenances placed, such as sculptures, birdbaths, birdhouse, fountains or

other decorative embellishments. The Association or Declarant shall have the right, after ten (10) days' notice to any Lot Owner setting forth the action intended to be taken by the Association or Declarant, provided at the end of such time such action has not already been taken by such Lot Owner, (i) to mow or edge the grass thereon, (ii) to remove any debris therefrom, (iii) to trim or prune any tree, hedge, or planting that, in the opinion of the Association or Declarant, by reason of its location or height or the manner in which it has been permitted to grow, is detrimental to the enjoyment of adjoining property or is unattractive in appearance, (iv) to repair or stain/paint any fence thereon that is out of repair or not in harmony, with respect to color, with fencing on adjacent property, and (v) to do any and all things necessary or desirable in the opinion of the Association or Declarant to place such property in a neat and attractive condition consistent with the intention of this Declaration. The person who is the Lot Owner of such Lot at the time such work is performed by the Association shall be personally obligated to reimburse the Association for the cost of such work within ten (10) days after it is performed by the Association, and if such amount is not paid within said period of time, such Lot Owner shall be obligated thereafter to pay interest thereon at the maximum rate allowable by law, and to pay attorneys' fees and court costs incurred by the Association in collecting said obligation, and all of the same shall be secured by a lien on the Lot, subject to liens then existing thereon. Such lien shall be enforceable as any other Assessment lien as provided in this Declaration.

5.17 Commercial and Recreational Vehicles and Trailers. No commercial vehicle, commercial use truck, bus, trailer, mobile home, recreational vehicle, camper, truck with camper top, boat, boat trailer, self-propelled or towable equipment or machinery of any sort or any item deemed offensive by the Declarant or Association or like equipment shall be permitted on any Lot on a permanent basis. Nor shall any such equipment be allowed on any street right-of-way without movement for a period of twenty-four (24) hours or more during a period of seven (7) consecutive days. No junk vehicles or vehicles in disrepair or neglect shall be stored, repaired or displayed on any Lot, street or otherwise in the Development. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view by neighboring residences and streets. During the construction of improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of construction of the Residence.

This restriction shall not apply to automobiles or small passenger trucks in good repair and attractive condition, provided that any such vehicles are parked on an improved driveway. No vehicle shall ever be permitted to be parked on the front or side lawn within view of the public.

5.18 Recreational Equipment. Recreational and playground equipment on a Lot shall be placed or installed only upon the rear of a Lot. Basketball goals may be placed adjacent to the driveway if the backboards are installed behind the front building line and are constructed of a clear plexiglass. No above ground pools shall be allowed on any Lot.

5.19 Non-Discrimination. No Lot Owner or person authorized to act for a Lot Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

5.20 Animals. No agricultural animals may be kept on any Lot and no animals, including birds, insects, reptiles, sheep, goats, horses, cattle, poultry, dangerous animals (the determination as to what is a

dangerous animal shall be in the sole discretion of the Association's Board), livestock of any kind shall ever be kept in the Development except that dogs, cats or other common household pets (not to exceed a total of three animals) may be kept by the Lot Owner or tenant of any Residence, provided they are not kept for any commercial purpose. Any allowable pet that is kept in a household must be confined to the Lot either by constraints of a backyard fence, a leash or within the residence. No animal shall be permitted to run freely away from any Lot and must be controlled by a leash or trained to walk with the Lot Owner unleashed. All applicable leash and licensing laws in effect in the City of North Richland Hills, Texas and Tarrant County, Texas shall also apply to this animal husbandry provision. No animal shall be allowed to become a nuisance.

5.21 Trash and Rubbish Removal. No trash, rubbish, garbage, manure, or debris of any kind shall be kept or allowed to remain on any Lot. Lot Owners shall remove such prohibited matter from their Lots at regular intervals at their expense, and prior to such removal all such prohibited matter shall be placed in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be seen from neighboring Lots or public or private streets. If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property. Except for building materials employed during the course of construction of any Structure, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner consistent with this **Section 5**. Reasonable amounts of construction materials and equipment may be stored upon a Lot for reasonable periods of time during the construction of Improvements thereon.

5.22 Reasonable Enjoyment. No nuisance shall ever be erected, placed, or suffered to remain upon any Lot in the Property and no Lot Owner of, or resident on, any Lot in the Property shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Lot Owner or resident. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become an annoyance or nuisance to the community. The Association's Board is hereby authorized to determine what constitutes a violation of this restriction.

5.23 Exterior Surfaces. All Residences shall be constructed of at least eighty percent (80%) brick on exterior walls and any portion of exterior walls not covered by brick shall be covered by Hardi-Plank, fiber cement plank and/or fiber cement siding. Recommended siding materials include brick, stone, Hardi-Plank and stucco. Large sheet siding (i.e. 4' x 8' sheets) shall not be used. There shall be no bright red, orange or unusual looking brick. All brick mortar shall be in subdued colors. Old used brick will be accepted in special circumstances, as will be the painting of brick. All gables which face the front of the Residence or which face a side street, if on a corner Lot, shall be constructed or faced with the same masonry material as the rest of the Residence.

Chimney stacks on front of Residences may not be cantilevered and hang in the air, but must sit on foundations and be veneered with brick, stone or other approved masonry material as applicable to each individual Residence.

5.24 Roof. Roof material for Residences on a Lot shall be a high quality composition shingle of equal to or better than a laminated medium weight shingle, e.g. Prestique II. Three tab shingles shall be allowed. Other roofing materials may include: natural or approved artificial slate; fire treated wood shingle

or #2 shake, or better; or clay or concrete tile that is consistent with the standards of **Section 5.24**. In no event shall the pitched portion of a roof be comprised of more than one material.

Minimum roof pitch on the front elevation shall be 5 to 12. Certain architectural styles, e.g. Georgian, do not require as steep a minimum roof pitch and will be analyzed by the Association on a case by case basis. Minimum roof pitch on rear elevations and certain front to back elevation shall be 5 to 12.

5.25 Pools and Spa Equipment. Plans for proposed swimming pools, hot tubs, surrounding decks, fencing and screening must be in accordance with the standards of **Section 6**. All swimming pools and hot tubs must be fenced in accordance with any applicable Subdivision Ordinance. No above-ground pools will be approved.

5.26 Mailboxes. All mailboxes shall be constructed of brick, ornamental iron or masonry material to match or be comparable with the style and materials of the Residence. Dual mailbox configurations in proximity to be common property lines of Lots are permitted

5.27 Oil and Mining Operations. No oil or natural gas drilling; oil or natural gas development; or oil refining, quarrying, or mining operations of any kind; no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained or permitted in the Development.

5.28 Commercial Use. No activity, whether for profit or not, which is not related to single-family residential purposes, shall be carried on any Lot, except on those Lots which may be designated for use as sales offices, construction offices, and storage facilities for a period of time commensurate with home construction and sales within the Property. Except for this temporary use on selected Lots, no noxious or offensive activity of any sort shall be permitted, nor shall anything be done, on any Lot which may be or become an annoyance or nuisance to the neighborhood.

5.29 Septic Tanks. No cesspool, septic tank or privy shall be placed or maintained on any Lot.

5.30 Declarant's Rights During Development Period. During that period of time while the apartment project on the Multi-Family Tract is being constructed or is in its initial lease-up stage and/or any parcels of land or Lots located within the Property are being developed and marketed (the "**Development Period**"), the Declarant, with the right of assignment, shall have and hereby reserves the right to reasonable use of the Common Property and land owned by Declarant within the Property in connection with the promotion and marketing of land within the boundaries of the Development. Without limiting the generality of the foregoing, Declarant may erect and maintain such signs (including Apartment Promotional Signs), temporary buildings, model homes, and other structures as Declarant may reasonably deem necessary or proper with the promotion, development, and marketing of land within the Property during the Development Period.

5.31 Builder Rights. During the Development Period, Builder shall have the right to erect and maintain such signs, model homes, and other Structures as may reasonably be necessary or proper in connection with Builder's promotion, development, and marketing of Lots and Residences located within the Development.

5.32 Construction Work. Except in an emergency, or when other unusual circumstances exist as determined by the Board, outside construction work or noisy interior construction work shall be permitted only after 6:00 A.M. and before 9:00 P.M.

5.33 Electrical Telephone and other Utility Lines. All electrical, telephone and other utility lines and facilities which (i) are located on a Lot, (ii) are not within or part of any Structure, and (iii) are not owned by a governmental entity, a public utility company, or the Association, shall be installed in underground conduits or other underground facilities. Lighting fixtures may be installed above ground.

5.34 Window Coolers. No window or wall type air conditioners or water coolers shall be permitted to be used, erected, placed or maintained on, or in, any Residence on any part of the Lot.

ARTICLE VI
ARCHITECTURAL CONTROL COMMITTEE

6.01 Appointment of Members. An Architectural Control Committee (the "Committee"), which shall consist of three (3) members who shall be natural persons and who may or may not be employed by Declarant, shall initially be appointed by Declarant. All matters before the Committee shall be decided by majority vote of its members. The members of the Committee shall serve until they resign or are removed by the party appointing them to the Committee (which the appointing party may do at any time). Subsequent appointments to the Committee shall be made by Declarant until such time as Declarant either relinquishes such power by written notice to the Board of Directors or all of the Lots owned by Declarant have been sold by Declarant; thereafter, appointments and removals from the Committee shall be made by the Board of Directors for such term as they shall designate. The Board of Directors shall have the right to review any action or non-action taken by the Committee and shall be the final authority.

6.02 Submission of Plans to Architectural Control Committee. No home, building, fence, wall, parking area, hardscape, swimming pool, spa, pole, driveway, fountain, landscaping, out-building, sprinkler system, exterior color or shape, or other improvement of any kind or type, or any alteration, addition to, change or modification of any of the foregoing, shall be constructed, erected or maintained upon any Lot or the patio or garage used in connection with any Lot after such Lot has been sold by Declarant until the plans and specifications showing the nature, kind, color, shape, height, materials and location of the same are submitted to and approved in writing by the Committee. Plans and specification shall be submitted to the Committee at least thirty (30) days prior to the commencement of any such construction or modification. Two (2) copies of the following shall be submitted for approval: a site plan showing the entire Lot with existing improvements, and floor plan and elevations of all faces of the proposed structure, a description of all exterior construction materials and such other materials, including engineering plans, if necessary, as the Committee shall reasonably require in order to enable the Committee to fully evaluate the proposed construction or modification. A copy of the above described plans and specifications may be retained by the Committee.

6.03 Approval of Plans. The Committee shall review the plans and specifications and notify the Owner in writing of its approval or disapproval. If the Committee fails to approve or disapprove said plans and specifications in writing within thirty (30) days after the same has been submitted to it, they will be deemed to have been approved by the Committee. Any disapproval shall set forth the elements disapproved and the reason or reasons thereof. The Committee shall not have unbridled discretion with respect to taste, design and the standards set forth herein, but shall use commercially reasonable efforts to promote and ensure

a high level of taste, design quality, aesthetic harmony, and conformity throughout the Development, consistent with standards established by this Declaration. Subject to rights of the Board of Directors set forth above, the judgment of the Committee in this respect shall be final and conclusive and the Owner shall promptly correct the plans and specifications (if disapproved) and resubmit them for approval. No construction, alteration, change or modification shall commence until approval of the Committee is obtained. The Committee, subject to the rights of the Board of Directors as set forth above, may approve any reasonable deviation from **Section 5** of this Declaration as the Committee, in its sole and absolute discretion, deems consistent with the purpose hereof. No member of the Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the denial of any submittal or grant of any deviation to an Owner. Future requests for deviations submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a deviation to any Owner shall not constitute a waiver of the Committee's rights to strictly enforce the Declaration and the architectural standards provided herein against any other Owner. Any approval of a deviation from these covenants and restrictions will be valid only if such approval is set forth in a written instrument in recordable form executed and acknowledged by a majority of the members of the Committee at the time such deviation is approved. No deviation from these covenants and restrictions shall be granted or inferred by reason of the approval or deemed approval of plans and specifications submitted to the Committee for approval that do not conform to the provisions of this Declaration. The Committee shall have the authority hereunder to require any Owner or Owner's agents or contractors to cease and desist in constructing or altering any improvements on any Lot, where such actions have not first been reviewed and approved by the Committee as required hereunder or constitute a violation of this Declaration, the Design Guidelines or any other documents promulgated by the Committee. The violating Owner shall remove such violating improvements or site work at its sole expense and without delay, returning same to its original condition or bringing the Lot into compliance with this Declaration, Design Guidelines, Committee documents, and any plans and specifications approved by the Committee for construction on that Lot. This Declaration is notice of such liability for violation and Owners hereby agree to bear the cost and expense to cure any violations according to this provision, regardless of the substantial cost, time or loss of business involved.

6.04 Committee Members' Liability. Neither Declarant, the Association, the Board of Directors, the Committee nor any employees, officers, directors or members thereof shall be liable for damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications. Any errors in or omissions from the plans or the site plan submitted to the Committee shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Committee shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, City codes, state statutes or the common law, whether the same relate to Lot lines, building lines, easements or any other issue.

6.05 Builder Plans. Notwithstanding anything to the contrary contained herein, once a particular set of plans and specifications for a Residence to be constructed in the Development submitted by a Builder has been approved by the Committee or deemed approved, such Builder may construct Residences in the Development on any Lot in accordance with such plans and specifications without the necessity of obtaining subsequent approvals therefor, so long as there are no major material changes in the plans and specifications and the Committee approves of the location of the Residences to be constructed using such plans and specifications to prevent unnecessary duplication thereof within the Development.

6.06 Design Guidelines. The Committee has the right to issue and amend Design Guidelines from time to time which may contain the specific provisions applicable to all of the Lots regarding style, basic site design issues, aesthetics of each home, the use of quality exterior finish materials, minimum landscaping plans for the Lots, and other issues concerning building standards, permitted construction or modification, and the Committee's operation. The Design Guidelines, together with this Declaration, will be used by the Committee to determine the approval of all plans. The Design Guidelines may be responsive to future technological advances or general changes in architectural designs and materials and related conditions. The Design Guidelines may be amended without prior notice to the Owners.

6.07 Pertaining to the Committee. Written notice may be delivered by the Committee to Owner or any agent or contractor with apparent authority to accept same and notice shall be binding on Owner as if actually delivered to Owner. The Committee or its agents or assigns shall have the right, but not the obligation, to enter any applicable property to determine if violations of this Declaration, the Design Guidelines, or any other documents promulgated by the Committee exist. In so doing, the Committee shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry nor in any way shall the Association or its agents be liable for any accounting or other claim for such action. The Committee shall have the right to set time constraints for both the commencement and completion of construction which constraints shall be no less than ninety (90) days [after which date a new approval must be obtained] from approval of the plans to commence construction and nine (9) months from the commencement date to complete construction.

ARTICLE VII
EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 Easements.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

(i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities;

(ii) the erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function;

(iii) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and

(iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.

(b) An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles and other service vehicles to enter upon the Common Property including, but not limited to, private streets, in the performance of their duties and further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Common Property to render any service.

(c) Each Lot and its Lot Owner are hereby declared to have an easement, and the same is hereby granted to Declarant and the Multi-Family Tract Owner, over all adjoining Lots, the Multi-Family Tract and Common Property for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any Structure, or any other cause. There shall be easements for the maintenance of said encroachment, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of a Lot Owner or Owners if said encroachment occurred due to the willful misconduct of said Lot Owner or Owners. In the event a Structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Lot Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot.

(d) In the event that audio and video communication services and utilities are made available to any said Lots by means of an underground coaxial cable system, the company furnishing such services and facilities shall have a two foot (2') wide easement along and centered on the underground wire or cable when and as installed by said company from the utility easement nearest to the point of connection on the permanent improvement or Structure constructed, or to be constructed upon said Lot, and in a direct line from said nearest utility easement to said point of connection.

(e) No Lot Owner shall have any right to use any easement retained by the Declarant or conveyed by Declarant to the Association in a manner which is inconsistent or which interferes with the intended use for such easement.

7.02 Easement Area. The words "**Easement Area**" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.

7.03 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the provisions of this **Section 7.03**. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of **Section 7.01**.

7.04 Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by the recorded subdivision plat of the Development, applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the Covenants,

Conditions and Restrictions created or imposed by this Declaration, the most restrictive provision shall govern and control.

ARTICLE VIII
ENFORCEMENT

8.01 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns.

8.02 Right of Abatement.

(a) In the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the right of abatement ("**Right of Abatement**").

(b) The Right of Abatement, as used in this Section, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the costs thereof including the costs of collection and reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by Law or 18% per annum to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot or the Multi-Family Tract (as applicable) enforceable pursuant to the provisions of Section 8.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Article IV hereof, and (iii) all deeds of trust or mortgages given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon), or (2) to finance the construction, repair or alteration of Structures.

8.03 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.04 Collection of Assessments and Enforcement of Lien.

(a) If any Assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may (i) bring an action at law against the Owner personally obligated to pay the same, (ii) bring an action to foreclose any lien created by this Declaration against the Lot or Lots (or the Multi-Family Tract) subject to the lien (which shall include the right, but not the obligation, to file a notice of lien against said Lot (or the Multi-Family Tract) in the deed records of Tarrant County, Texas), or both, for the purpose of collecting such Assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

(b) As an additional remedy, but in no way as a limitation on the remedies, if any Assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots (or the Multi-Family Tract) subject to the lien at auction, at the usual place for conducting sales at the Court House in Tarrant County, Texas, to the highest bidder for cash, after providing to the Owner all notices and performing all acts required by Section 51.002 of the Texas Property Code, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or its assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and the Association or assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of Assessment, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent (15%) of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death, incapacity, or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

(c) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT (OR THE MULTI-FAMILY TRACT) SUBJECT TO THIS DECLARATION, TO THE FULLEST EXTENT PERMITTED BY LAW WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF TEXAS, (EXCEPTING SECTION 51.002 OF THE TEXAS PROPERTY CODE) OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION, AND EACH OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

8.05 No Waiver. The failure of the Declarant, the Association, or the Owner, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no

event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX
DURATION AND AMENDMENT

9.01 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record in the county records of Tarrant County, Texas, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years; provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the deed records of Tarrant County, Texas, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of those Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the Bylaws of the Association.

9.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the deed records of Tarrant County, Texas, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot or the Multi-Family Tract (as applicable) or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot or the Multi-Family Tract, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the lien status, security and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this **Section 9.02** shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot or the Multi-Family Tract (as applicable), agrees to be bound by such amendments as are permitted by this **Section 9.02** and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or the Multi-Family Tract subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot or the Multi-Family Tract subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration, or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.03 Amendments by Association. Amendments to this Declaration, other than those authorized by **Section 9.02** hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association provided, however, (i) that any amendment which materially and adversely affects the lien status, security and interest of any mortgagee must be approved by such mortgagee, and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

ARTICLE X
MISCELLANEOUS

10.01 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

10.02 Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

10.03 Headings. The headings of the Articles and Section hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

10.04 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

10.05 Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, certified or registered, return receipt requested, with sufficient postage, and sent to the following addresses:

(a) Declarant:

Western Rim Investors 2001-3, L.P.
601 Canyon Drive, Suite 101

Coppell, Texas 75019-3859
Attention: Marcus D. Hiles

with a copy to:

David M. Mellina
Mellina & Larson, P.C.
777 Main Street, Suite 770
Fort Worth, Texas 76102

(b) Owners:

Each Owner's address as registered with the Association in accordance with the Bylaws.

Any written communication transmitted in accordance with this Section 10.05 shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

10.06 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot or the Multi-Family Tract (as applicable), acknowledges that Declarant shall have no such liability.

10.07 Insurance.

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep all Improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Texas with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such Improvements in the event of loss of any and/or all of such Improvements, fixtures and contents thereof; and (ii) public liability insurance in such amounts as shall be determined by the Board of Director as appropriate for the Common Property.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any Improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association entitled to vote thereon, and, so long as the Declarant has the right to appoint and remove Directors, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made

available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a Special Assessment. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the Improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative Improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Development in a neat and attractive condition.

(c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

(d) In addition to the coverage described hereinabove, the Association shall obtain such additional amounts and types of insurance as may be required from time to time, by either the Veterans Administration or Federal Housing Administration, their successors and assigns, for similar type residential subdivision communities.

10.08 Indemnification and Hold Harmless.

(a) The Association shall indemnify every Officer and Director against any and all expenses, including counsel fees reasonably incurred by or imposed upon any Officer or Director 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 or Director. The Officers and Directors shall not be liable for any mistake of judgment, negligence 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 by them, in good faith, on behalf of the Association (except to the extent that such Officers or Directors may also be members of the Association), and the Association shall indemnify and forever hold each such Officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Officer or Director, or former Officer or Director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and Officers' and Directors' liability insurance to fund this obligation.

(b) Each Owner shall be liable to the Association for any damage to the Common Property of any type or to any equipment thereon which may be sustained by reason of the negligence of said Owner, his tenants, employees, agents, customers, guests or invitees, to the extent that any such damage shall not be covered by insurance. Each Owner does further, by the acceptance of a deed, agree to

indemnify each and every other Owner, and to hold harmless each and every other Owner, from any claim of any person for personal injuries or property damage occurring within or upon his Lot or the Multi-Family Tract (as applicable).

10.09 Transfer Fees. Declarant shall be obligated to pay any transfer fees or similar types of fees for any Lot (to the extent that any such fees are charged by the Association and permitted hereunder), but only with respect to a transfer of a Lot by Builder to another party.

ARTICLE XI MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Residences in the Development. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

11.01 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, guarantor and the Residence number, therefore 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 Development or which affects any Residence 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 an Owner of a Residence subject to the mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residence of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; or

(c) any proposed action which would require the consent of a specified percentage of eligible mortgagees.

11.02 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Residence in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

11.03 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 Residence.

11.04 Amendment by Board. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

11.05 Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Texas law for any of the acts set out in this Article.

11.06 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 thirty (30) days of the date of the Association's request.

ARTICLE XII CONDEMNATION

12.01 Condemnation or Other Governmental Taking. If all or any part of the Common Property are taken by any authority having the power of condemnation or eminent domain, or are conveyed in lieu thereof by the Association with the approval of at least seventy-five percent (75%) of the Members and of Declarant (as long as Declarant owns at least one (1) Lot and/or the Multi-Family Tract), the award or proceeds made or collected for such taking or sale in lieu thereof are payable to the Association. The Association shall disburse or hold such award or proceeds as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Property on which Improvements have been constructed, then, unless within sixty (60) days after such taking, Declarant (as long as Declarant owns at least one (1) Lot and/or the Multi-Family Tract), together with at least seventy-five percent (75%) of the Members, decide otherwise, the Association shall restore or replace the Improvements to the extent practicable, on other existing Common Property, in accordance with the plans approved by the Association and Declarant. If the awards or proceeds are not sufficient to defray the cost of repair and replacement of the Improvements and such deficiency cannot be appropriated from a reserve fund established for such purpose, the Association may levy one or more Special Assessments, in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. If such Improvements are not repaired or restored, the Association shall retain the award or proceeds for the benefit of the Association.

(b) If the taking or sale in lieu thereof does not involve any Improvements to the Common Property, or if there are excess funds remaining after any restoration or replacement of the Improvements, then the Association shall retain the award, proceeds, or excess funds for the benefit of the Association.

(c) If the taking or sale in lieu thereof includes all or any part of the Common Property, then a court of competent jurisdiction shall apportion such award or proceeds between the Association and the Owners of the other property taken so as to give just compensation to each. In lieu of seeking judicial apportionment, (i) the Association, (ii) the Owners and their lenders of all Lots and Residences wholly or partially taken, and (iii) Declarant (as long as Declarant owns at least one (1) Lot and/or the Multi-Family Tract), may mutually agree on the method of apportionment.

12.02 Condemnation of Lots.

(a) If all or any part of a Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and the Owner elects not to restore the remainder of the Lot, then the Owner shall promptly remove any remaining Improvements damaged or destroyed by such taking or conveyance and shall leave the Lot in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of the Lot remaining after such taking or conveyance is insufficient to permit the restoration of the remaining Improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations, then the Owner, after removing all remaining Improvements and placing the Lot in a clean, orderly, safe, and sightly condition, may deed the remaining portion of the Lot to the Association as a part of the Common Property. Upon the conveyance by an Owner of his remaining portion of a Lot, the Owner shall not be a Member.

(b) If any part of a Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and the Owner elects to restore the remainder of the Lot, then the Owner shall restore the remainder of the Lot in nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. The Owner shall commence the restoration within sixty (60) days after the taking or conveyance and shall proceed diligently in a good and workmanlike manner to completion.

[THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]

Unofficial

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed as provided in the acknowledgement set forth hereinafter but to be effective as of the day and year first above written.

WESTERN RIM INVESTORS 2001-3, L.P.,
a Texas limited partnership

By: Western Rim GenPar 01-3, L.P.,
a Texas limited partnership

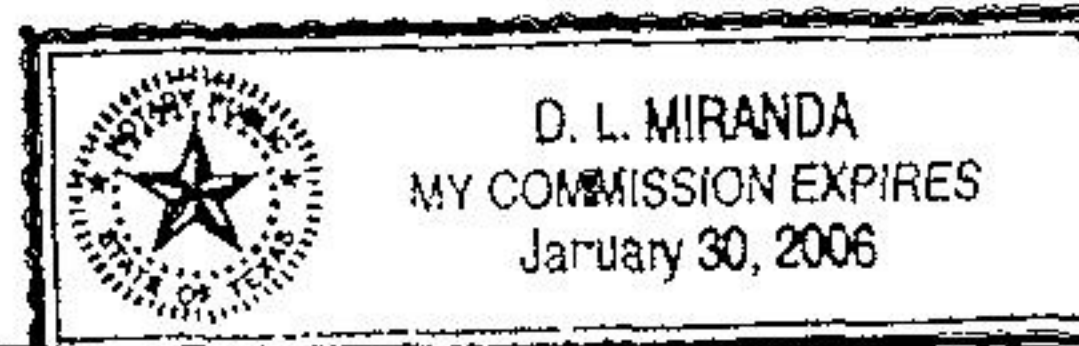
By: Western Rim Investment Advisors 01-3,
LLC, a Texas limited liability company

By: _____
Name: M. Hiles
Title: CEO

THE STATE OF TEXAS

COUNTY OF TARRANT

This instrument was acknowledged before me on the 21st day of January, 2003, by Marcus Hiles, CEO of Western Rim Investment Advisors 01-3, LLC, a Texas limited liability company, as sole general partner of Western Rim GenPar 01-3, L.P., a Texas limited partnership, as sole general partner of Western Rim Investors 2001-3, L.P., a Texas limited partnership, on behalf of said limited partnership.



Notary Public in and for the State of Texas

DELIA L. MIRANDA [Signature]
Notary's Typed or Printed Name

My Commission Expires: 1/30/06

Unofficial Copy

The Association, by the execution hereof, acknowledges and agrees that the Association is hereby bound by all of the Association's obligations under this Declaration of Covenants, Conditions and Restrictions.

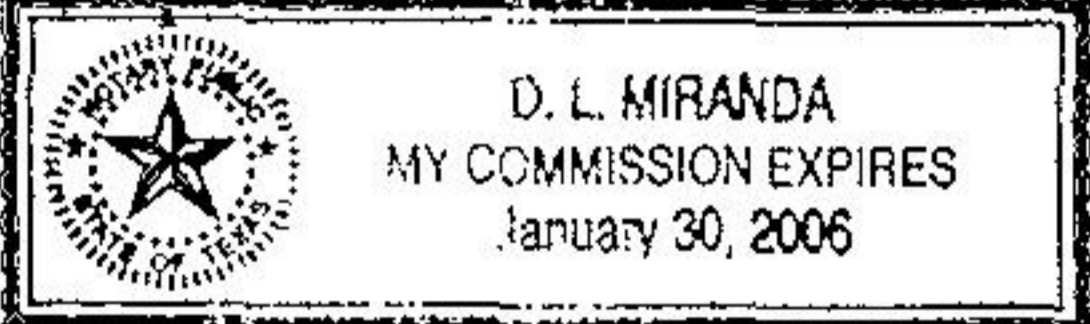
IN WITNESS WHEREOF, the Association, acting through its duly authorized officers, has caused this Declaration to be duly executed as provided in the acknowledgement set forth hereinafter.

THE ESTATES AT NORTH RICHLAND HILLS HOMEOWNERS' ASSOCIATION, INC., a Texas non-profit corporation

By: _____
Name: M. Miles
Title: CEO

THE STATE OF TEXAS
COUNTY OF TARRANT

This instrument was acknowledged before me on the 21st day of January, 2003, by Marius Miles, CEO of The Estates at North Richland Hills Homeowners' Association, Inc., a Texas non-profit corporation, on behalf of said corporation.



Notary Public in and for the State of Texas

DEZIA L. MIRANDA *Almura*

Notary's Typed or Printed Name

My Commission Expires: 1/30/06

After recording, return to:
David M. Mellina
Mellina & Larson, P.C.
777 Main Street, Suite 770
Fort Worth, Texas 76102

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

BEING a tract of land situated in the John C. Yates Survey, Abstract No. 1753, City of North Richland Hills, Tarrant County, Texas and being part of that certain 63.099 acre tract of land conveyed to E-Systems, Inc. Pool Trust by deed recorded in Volume 9290, Page 1785, Deed Records, Tarrant County, Texas and being more particularly described as follows:

BEGINNING at a ½ inch capped iron rod found for corner in the South ROW line of Mid-Cities Boulevard (a 110' ROW), said iron rod being at the Northwest corner of said E-Systems tract and the Northeast corner of Block 1, Northland Shopping Center Addition, recorded in Volume 338-211, Page 3, Plat Records, Tarrant County, Texas, said iron rod also being a distance of 445.66 feet to the East ROW line of Rufe Snow Road (60' from the centerline);

THENCE: S 89° 51' 53" E, along the South ROW line of Mid-Cities Boulevard and the North line of said E-Systems tract, a distance of 963.57 feet to a ½ inch capped iron rod found for corner;

THENCE: S 06° 37' 45" W, departing the South ROW line of Mid-Cities Boulevard and the North line of said E-Systems tract, a distance of 41.12 feet to a ½ inch capped iron rod found for angle point;

THENCE: S 11° 13' 55" W, a distance of 755.52 feet to a ½ inch capped iron rod found for angle point;

THENCE: S 30° 01' 13" E, a distance of 726.86 feet to a ½ inch capped iron rod found for angle point;

THENCE: S 26° 17' 54" E, a distance of 103.18 feet to a ½ inch capped iron rod found for corner in the Northeasterly ROW line of Dart (Cottonbelt) Railroad (a 100' ROW) and the Southwesterly line of said E-Systems tract;

THENCE: S 65° 06' 53" W, along the Northeasterly ROW line of Dart (Cottonbelt) Railroad and the Southwesterly line of said E-Systems tract, a distance of 1037.56 feet to a ½ inch capped iron rod found for corner;

THENCE: N 53° 31' 12" W, departing the Northeasterly ROW line of Dart (Cottonbelt) Railroad and the Southwesterly line of said E-Systems tract, a distance of 356.42 feet to a ½ inch capped iron rod set in a curve to the left in the ROW line of Stardust Drive (a 60' ROW), having a central angle of 204° 28' 16", a radius of 50.00 feet and a chord bearing N 65° 47' 57" W, a distance of 97.73 feet;

THENCE: along said curve to the left and the ROW line of Stardust Drive, an arc distance of 178.44 feet to a ½ inch capped iron rod set;

THENCE: S 65° 05' 31" W, along the North ROW line of Stardust Drive, a distance of 58.11 feet to a ½ inch capped iron rod set at the beginning of a curve to the right, having a central angle of 28° 27' 29", a radius of 170.00 feet and a chord bearing S 79° 19' 15" W, a distance of 33.57 feet;

THENCE: along said curve to the right and the North ROW line of Stardust Drive, an arc distance of 84.44 feet to a ½ inch capped iron rod set for angle point;

THENCE: N 86° 44' 12" W, along the North ROW line of Stardust Drive, a distance of 131.14 feet to a ½ inch capped iron rod set for corner in the East line of Block B, Northland Shopping Center Addition, recorded in Cabinet A, Slide 1283, Plat Records, Tarrant County, Texas;

THENCE: N 03° 15' 00" E, along the East line of said Block B, Northland Shopping Center Addition, a distance of 400.01 feet to a ½ inch capped iron rod set for corner in the South line of Block A, Northland Shopping Center Addition, recorded in Volume 388-131, Page 82, Plat Records, Tarrant County, Texas, said iron rod also being at the Southeast corner of said Block B;

THENCE: S 86° 45' 00" E, along the South line of said Block A, Northland Shipping Center Addition, a distance of 263.47 feet to a ½ inch capped iron rod found for corner at the Southeast corner of said Block A;

THENCE: N 03° 15' 00" E, along the East lines of said Block A, Northland Shopping Center Addition and said Block 1, Northland Shopping Center Addition and the West line of said E-Systems tract, a distance of 1340.96 feet to the PLACE OF BEGINNING and containing 43.9062 acres of land.

Unofficial

COPY

EXHIBIT "B"

RESTRICTED MULTI-FAMILY AREA

That portion of the Multi-Family Tract that is within 100 feet of any Lot, said portion being generally to the east and south of the dashed line on the drawing attached hereto.

Unofficial Copy

EXHIBIT "C"

DESCRIPTION OF COMMON PROPERTY

Those portions of the Property labeled as "Common Open Space" and depicted by gray shading on the drawing attached hereto.

Unofficial Copy

D203117527
MELLINA & LARSON PC
777 MAIN ST STE 770
FT WORTH TX 76102

-W A R N I N G-T H I S I S P A R T O F T H E O F F I C I A L R E C O R D -- D O N O T D E S T R O Y

I N D E X E D -- T A R R A N T C O U N T Y T E X A S
S U Z A N N E H E N D E R S O N -- C O U N T Y C L E R K
O F F I C I A L R E C E I P T

T O : M E L L I N A & L A R S O N P C

RECEIPT NO	REGISTER	RECD-BY	PRINTED DATE	TIME
203262148	DR2A	LF	04/04/2003	11:23

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1	D203117527	WD	20030404	11:23	CK 5009

T O T A L : D O C U M E N T S : 01 F E E S : 91.00

B Y : _____

ANY PROVISION WHICH RESTRICTS THE SALE RENTAL OR USE
OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE
IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.