



RESTRICT

2005032616

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FIRETHORNE**

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR FIRETHORNE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FIRETHORNE (this "Declaration"), made as of the date hereinafter set forth by JDC/FIRETHORNE, LTD., a Texas limited partnership (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of those certain tracts of land in Fort Bend County, Texas, which have been platted and subdivided as Firethorne, Section One (1), Firethorne, Section Two (2), Firethorne, Section Three (3) and Firethorne, Section Four (4) (collectively, the "Subdivisions"), according to the plats thereof recorded as Plat Nos. 20040234, 20040236, 20040218 and 20040202, respectively, in the Plat Records of Fort Bend County, Texas; and

WHEREAS, Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvements for the benefit of all owners of the property within the Subdivisions and such other property as may hereafter be annexed into the jurisdiction of the Association (as hereinafter defined) and subjected to this Declaration and Declarant desires to provide a flexible and reasonable procedure for the overall development of such property and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such property.

NOW, THEREFORE, Declarant hereby declares that the Lots (as hereinafter defined) within the Subdivisions are hereby subjected to the provisions of this Declaration and such property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**ARTICLE I
DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings:

SECTION 1. "Area of Common Responsibility" shall mean the Common Area, together with those areas, if any, which by contract or agreement become the

responsibility of the Association. Road rights-of-ways within or adjacent to the Properties may be part of the Area of Common Responsibility.

SECTION 2. "Articles of Incorporation" means the Articles of Incorporation of the Firethorne Community Association, Inc. and any amendments thereto, as filed with the Secretary of State of the State of Texas.

SECTION 3. "Assessments" shall mean and refer to the Residential Assessments (as hereinafter defined), the Neighborhood Assessments (as hereinafter defined), the Special Assessments (as hereinafter defined), and any other amounts or sums due by any Owner to the Association pursuant to the provisions of this Declaration or a Supplemental Declaration, levied by the Association for purposes of obtaining funds to pay Association Expenses as provided herein.

SECTION 4. "Association" shall mean and refer to Firethorne Community Association, Inc., a non-profit, non-stock, membership corporation incorporated under the laws of the State of Texas, its successors and assigns.

SECTION 5. "Association Expenses" shall mean and include the actual and estimated expenses of operating the Association, both for general and Neighborhood purposes, as may be found to be necessary and appropriate by the Board of Directors of the Association pursuant to this Declaration and the Association's By-Laws and Articles of Incorporation.

SECTION 6. "Board of Directors" or "Board" shall mean the governing body of the Association whose members shall be appointed by the Declarant during the Class B Control Period and thereafter elected by the Members.

SECTION 7. "Builder" shall mean and refer to any Person undertaking the construction of a Single Family Residence on a Lot for the purpose of selling same.

SECTION 8. "Builder Guidelines" shall mean and refer to written guidelines for the construction of improvements adopted by the Firethorne ARC, as amended from time to time. The Builder Guidelines may contain provisions applicable to all of the Lots within the jurisdiction of the Association, including the Lots within the Subdivisions, as well as certain provisions which are applicable only to the Lots in a specific Neighborhood or a specific platted subdivision.

SECTION 9. "By-Laws" shall mean the By-Laws of the Association, as amended from time to time.

SECTION 10. "Class B Control Period" means the period of time ending on the date on which the Declarant has conveyed the last Lot it owns in the Properties, during which period the Class "B" Member is entitled to appoint and remove the members of the Board of Directors.

SECTION 11. "Common Area" shall mean and refer to any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners and Occupants.

SECTION 12. "Declarant" shall mean and refer to JDC/FIRETHORNE, LTD., a Texas limited partnership, and its successors and assigns, provided that in the case of an assign in an instrument of conveyance or by a separate written instrument placed of record in the real property records of Fort Bend County, Texas, the assign is designated as the "Declarant" by the Declarant hereunder at such time. Upon such designation of a successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease.

SECTION 13. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Firethorne as it may hereafter be amended in accordance with the provisions hereof.

SECTION 14. "Exclusive Common Area" shall mean and refer to the property and facilities, if any, which by plat or other recorded instrument are restricted for use solely by the Owners and Occupants of a certain Neighborhood, which property and facilities may be maintained by the Association at the expense of such Neighborhood with Neighborhood Assessments.

SECTION 15. "Firethorne Architectural Review Committee" or "Firethorne ARC" refers to the committee created by Section 2 of Article VI of this Declaration which has the power to adopt the Builder Guidelines and the right to approve plans and specifications for construction of proposed improvements on the Lots within the jurisdiction of the Association as set forth herein and, unless a Modifications Committee is created in accordance with the provisions hereof, the right to approve plans and specifications for the alteration or modification of improvements on the Lots.

SECTION 16. "Landscaping Guidelines" shall mean and refer to landscape design, installation and maintenance criteria for the Lots which are adopted by the Firethorne ARC. The Landscaping Guidelines may be included within and be a part of the Builder Guidelines.

SECTION 17. "Lot" shall mean and refer to any portion of the Properties, whether developed or undeveloped, upon which a Single Family Residence has been constructed or it is intended by the Declarant that a Single Family Residence be constructed, excluding reserve tracts, but including lots created by the platting or replatting of a reserve tract. "Lots" shall mean and refer to each Lot and all of them. In the case of a parcel of land within the jurisdiction of the Association planned for single family residential development which has not been platted into Lots, the parcel shall be deemed to contain the number of Lots designated by the Declarant on the development plan for such parcel of land unless or until a different number of Lots is platted.

SECTION 18. "Member" shall refer to every Person entitled to membership in the Association, as provided herein.

SECTION 19. "Modifications Committee" refers to the committee which may be created by the Board of Directors as specified in Section 2 of Article VI of this Declaration for the purpose of reviewing plans submitted for the alteration or modification of the improvements on a Lot after construction of the initial improvements.

SECTION 20. "Mortgage" shall mean and refer to a deed of trust, mortgage or other similar security instrument granting, creating, or conveying a lien or security interest upon a Lot.

SECTION 21. "Mortgagee" shall mean a beneficiary or holder of a Mortgage.

SECTION 22. "Neighborhood" shall mean and refer to a separately designated and denominated area within the Properties. If separate Neighborhood status is desired, the Declarant shall designate in a Supplemental Declaration or other recorded instrument that such property shall constitute a separate Neighborhood. All property within the jurisdiction of the Association which is not included within a designated Neighborhood shall be considered a part of a single unnamed Neighborhood.

SECTION 23. "Neighborhood Assessments" shall mean assessments levied by the Board of Directors for payment of the Neighborhood Expenses of a particular Neighborhood.

SECTION 24. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of the Owners and Occupants of the Lots within a particular Neighborhood or Neighborhoods.

SECTION 25. "Occupant" shall mean any person occupying a Single Family Residence within the Properties for any period of time, regardless of whether such person is a tenant of the Owner of such property.

SECTION 26. "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to a Lot within the Properties, including a Person who has entered into a contract to sell his Lot, but excluding those having an interest merely as security for the performance of an obligation or those owning an interest in the mineral estate.

SECTION 27. "Person" shall mean any natural person, corporation, joint venture, partnership, association, trust or other legal entity.

SECTION 28. "Properties" shall mean and refer to (i) the real property contained within the Subdivisions described in the preambles to this Declaration, and (ii) such other real property as may hereafter be brought within the jurisdiction of the Association in accordance with the provisions of this Declaration.

SECTION 29. "Residential Assessments" shall mean assessments levied by the Board of Directors for the purpose of obtaining funds to pay those Association Expenses which are determined by the Board of Directors to benefit all Owners and Occupants of the Lots within the Properties.

SECTION 30. "Single Family" shall mean and refer to any number of persons living together as a single household unit, and the household employees of such household unit.

SECTION 31. "Single Family Residence" shall mean and refer to a detached residence constructed on a single Lot or on two (2) or more adjacent Lots owned by an Owner which are consolidated into a single building site.

SECTION 32. "Special Assessments" shall mean the assessments levied by the Board of Directors pursuant to Section 2(c) of Article III hereof for the purposes specified therein.

SECTION 33. "Street" shall refer to any street, boulevard, road, alley, lane, avenue, or thoroughfare within or adjacent to the Properties.

SECTION 34. "Supplemental Declaration" shall refer to an instrument which imposes restrictions on a portion of the Properties which may be enforced by the Association.

ARTICLE II FIRETHORNE COMMUNITY ASSOCIATION, INC.

SECTION 1. ORGANIZATION. The Association has been organized and formed as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure, and management of the maintenance funds, enforcement of the restrictions contained herein and in Supplemental Declarations, providing for the maintenance and preservation of the Area of Common Responsibility and the facilities of the Association and architectural control of the Lots.

SECTION 2. MEMBERSHIP. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership in the Association may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Lot owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Board, subject to the provisions of this Declaration and the By-Laws.

SECTION 3. VOTING. The Association shall have two classes of membership, Class "A" and Class "B", as follows:

- (a) CLASS A. Class "A" Members shall be all Owners with the exception of the Class "B" Member. Class "A" Members shall be entitled to (1) one vote for each Lot of which they are the Owner. In any situation where a Member is entitled personally to exercise the vote for a Lot and more than one Person holds the interest in a Lot required for membership in the Association, the vote for such Lot shall be exercised as those Persons among themselves determine. The vote for such Lot shall be suspended in the event more than one (1) Person holding the interest required for membership seeks to exercise it.
- (b) CLASS B. The Class "B" Member shall be the Declarant which shall have five (5) votes for each Lot it owns in the Properties. The Class "B" Member shall be entitled to appoint and remove the members of the Board of Directors during the Class B Control Period. The Class "B" Membership shall cease upon (i) the expiration of the Class B Control Period or (ii) on such earlier date that the Declarant, in its discretion, so determines and records an instrument to such effect in the real property records of Fort Bend County, Texas. In the event the Class "B" Membership ceases pursuant to clause (ii), the Declarant shall thereafter be a Class "A" Member with respect to the Lots it owns.

SECTION 4. NEIGHBORHOODS. The Declarant shall have the right to designate and denominate any area within the Properties as a Neighborhood by a Supplemental Declaration or other recorded instrument. All portions of the Properties not included within a designated Neighborhood shall be considered a part of a single unnamed Neighborhood. If a platted subdivision has not been designated by the Declarant as a Neighborhood, the Owners of a majority of the Lots in such platted subdivision may petition the Board of Directors for Neighborhood status. In addition, by petition signed by the Owners of the majority of the Lots in a Neighborhood, a Neighborhood may apply to the Board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhoods, or by petition signed by the Owners of the majority of the Lots in each of two (2) Neighborhoods, such two (2) Neighborhoods may request consolidation into one (1) Neighborhood. The granting of any such petition shall be at the sole discretion of the Board of Directors.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. PURPOSE OF ASSESSMENTS. The Assessments provided for in this Declaration shall be used by the Association to maintain and keep in good repair

the Area of Common Responsibility and for the general purposes of promoting the common benefit of the Owners and Occupants in the Properties. The judgment of the Board of Directors as to which services to provide or not provide and the expenditure of Assessments shall be final and conclusive so long as its judgment is exercised in good faith. Funds obtained by the Association from Assessments may be used for all or any of the following purposes:

- i. Operation, mowing, maintenance, repair, and improvement of the Area of Common Responsibility, including fences, entryways, road rights-of-way and easements within, adjacent to and in the vicinity of the Properties;
- ii. Payment of taxes and premiums for insurance coverage in connection with the Common Area and for directors and officers liability insurance;
- iii. Paying the cost of labor, equipment (including expense of leasing any equipment), material, and any associated management or supervisory services and fees;
- iv. Paying the cost and fees of a manager or firm retained to carry out the duties of the Association or to manage the affairs and property of the Association;
- v. Maintaining or replacing any landscaping in the Area of Common Responsibility;
- vi. Designing, purchasing and installing any improvements to the Area of Common Responsibility;
- vii. Removing debris from the Area of Common Responsibility;
- viii. Contracting for the installation and maintenance of street lights in the Properties and paying the costs of electricity for such lights;
- ix. Collecting and disposing of trash, garbage, rubbish and other similar materials if the Board elects to provide such service to the Properties;
- x. Payment of legal fees and expenses incurred to collect assessments and enforce this Declaration;
- xi. Entering into a contract for patrol services within the Properties;
- xii. Contracting for insect and pest control such as mosquito fogging;

- xiii. Carrying out the duties of the Board of Directors of the Association;
- xiv. Creation and funding of such reserve funds as the Board of Directors of the Association deems necessary; and
- xv. Carrying out such purposes of the Association as generally benefit the Members of the Association.

SECTION 2. TYPES OF ASSESSMENTS. Each Owner by acceptance of a deed to any Lot in the Properties, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (i) Residential Assessments; (ii) Neighborhood Assessments, if applicable; and (iii) Special Assessments to be established and collected as hereinafter provided.

(a) Residential Assessments. Residential Assessments shall be levied for Association Expenses which are determined by the Board to benefit all Members. Such expenses benefitting all Members shall be all Association Expenses except the expenses which are determined by the Board to benefit or provide a higher level of service to a particular Neighborhood or Neighborhoods. The good faith determination by the Board of which Association Expenses constitute Neighborhood Expenses shall be final. The initial annual Residential Assessment shall commence on the date that the first Lot in the Properties is conveyed by the Declarant or on such later date as the Board determines and shall be due and payable thirty (30) days thereafter. If such assessment commences on a date other than January 1, such assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, annual Residential Assessments shall be levied for each calendar year in advance and shall be due and payable on January 1 unless a different date is specified by the Board.

(b) Neighborhood Assessments. Neighborhood Assessments shall be levied against the Lots in a particular Neighborhood where the Board has determined that certain Association Expenses benefit only that Neighborhood. Upon written request by the Owners of a majority of the Lots within a Neighborhood, the Board shall initiate a service benefitting only that particular Neighborhood which shall be paid for by a Neighborhood Assessment or the Board shall discontinue a service previously provided to a Neighborhood; provided, however, the commencement or discontinuance of any such service during the Class B Control Period must be approved by the Declarant. Association Expenses benefitting only a particular Neighborhood may include, without limitation, Association Expenses incurred for maintenance and repair of the following items and provision of the following services within a particular Neighborhood: private streets, back door or garage trash pick-up service as opposed to curb side service, individual mailboxes, and operation and maintenance of Exclusive Common Areas, landscaping, fountains, lighting and signage within the particular Neighborhood. The total Neighborhood Assessment applicable to a particular Neighborhood shall be divided by the number of Lots within such Neighborhood and each Owner of a Lot

contained within the concerned Neighborhood shall be assessed an amount equal to the quotient so obtained.

(c) Special Assessments. In addition to the other Assessments authorized herein, the Board may levy one or more Special Assessments in any year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located upon the Common Area, including fixtures and personal property related thereto, or for such other purpose or purposes as the Board may determine; provided, however, except as otherwise hereinafter provided, any such Special Assessment must have the written consent of the Class "B" Member, as long as such membership exists, and a per Lot Special Assessment in an amount greater than ten percent (10%) of the most recent annual Residential Assessment per Lot must be approved by majority vote of the Class "A" Members present in person or by proxy at a meeting of the Members.

The Board may also levy one or more Special Assessments in any fiscal year for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, or repair or replacement of a capital improvement located upon Exclusive Common Area, including fixtures and personal property related thereto; provided, however, that any such Special Assessment shall have the affirmative vote or written consent of the Owners of a majority of the Lots in the Neighborhood or Neighborhoods entitled to exclusive use of such Exclusive Common Area.

If a Special Assessment is approved as herein required and levied, it shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed. Special Assessments shall be allocated among all Owners in the same manner as Residential Assessments unless the purpose of the Special Assessment is to provide funds to be used for Exclusive Common Area facilities, in which event the Special Assessment shall be allocated solely among the Owners of the Lots in the Neighborhood or Neighborhoods entitled to use the applicable Exclusive Common Area in the same manner as a Neighborhood Assessment.

SECTION 3. RATES OF ASSESSMENT. Assessments shall be fixed at uniform rates on all Lots; provided, however, there shall be no Assessment on unplatted Lots and the rate applicable to Lots owned by the Declarant shall be equal to one-half (1/2) of the full assessment amount. The rate of assessment for a Lot shall change upon its conveyance by the Declarant, with an appropriate proration of the assessments for the year of the ownership change.

SECTION 4. CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. All Assessments, together with interest commencing on the due date at a rate of interest to be set from time to time by the Board of Directors not in excess of the maximum lawful rate, costs (specifically including, but not limited to, any flat charges or percentage fees charged by any collection agencies used by the Association in

collecting Assessments), and reasonable attorney's fees and court costs actually incurred, shall be a charge on the land and shall be secured by a continuing lien upon the land against which each Assessment is made. Each such Assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such land at the time the Assessment fell due. Each such Owner shall be personally liable for his or her portion of each Assessment coming due while he or she is the Owner of the land, and each Assessment thereafter coming due unless and until such Owner notifies the Association of the sale or conveyance of the land against which the Assessment is made as hereinafter provided in this Section 4.

In order to extinguish any Person's personal liability with regard to Assessments coming due following the sale or conveyance of the Lot owned by such Person, such Person shall be obligated to notify the Association of such Person's sale or conveyance of the Lot against which Assessments may be levied. In that regard, each Person who at any time owned any Lot in the Properties against which Assessments may be levied shall no longer be liable or responsible for payment of Assessments coming due after the date upon which such Person furnishes to the Association a copy of the executed instrument of conveyance by which fee title to the Lot previously owned by such Person was conveyed or transferred to another Person, and the mailing address of the Person to whom such Lot was conveyed or transferred. Upon receipt of such information, the Association shall cause the name and address of the new Owner to be substituted for that of the prior Owner on the records of the Association, and the prior Owner shall no longer be liable or responsible for Assessments subsequently coming due. Each Person owning a Lot against which Assessments may be made shall have the obligation to notify the Association of any change in its address, and notice of any such change shall become effective five (5) days after written notice thereof has been provided to the Association. With regard to mailing notices of Assessments payable by any Person to the Association, the Association shall be deemed to have satisfied any obligation that it might have to provide written notices or bills if the same are mailed or delivered to the Owner at the address of such Owner as reflected on the records of the Association, and no such Owner or other Person liable for the payment of any Assessment shall escape such liability or be entitled to any deferral or abatement of interest or any late charges or collection costs with regard to delinquent Assessments on the basis of such Person's failure to receive notice thereof if the Association sent such notice by regular U.S. Mail to the most recent address of the Person according to the records of the Association.

Residential Assessments and Neighborhood Assessments shall be payable annually on a date specified by the Board of Directors; provided, however, the Board may, at its option, require payment of such Assessments in monthly or quarterly installments. Special Assessments shall be paid in such manner and on such date or dates as may be fixed by the Board.

SECTION 5. COMPUTATION. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during each calendar year or such other fiscal year as the Board may adopt, taking into consideration any subsidy payments to be received from the Declarant pursuant to an agreement with the Association and any additional property to be annexed into the jurisdiction of the Association in the forthcoming year. Such budget may include a capital contribution or reserve in accordance with a capital budget separately prepared and separate line items for expenses benefiting each Neighborhood which will be paid with a Neighborhood Assessment. In the event that the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year. The Association Expenses shall be allocated as follows:

- i. The amount of all estimated expenses to be incurred for the sole benefit of a particular Neighborhood shall be determined for each Neighborhood and that portion of the total estimated Association Expenses attributable to a particular Neighborhood shall be allocated among the Owners of the Lots in the Neighborhood as provided in Section 2(b) of this Article III, and shall be levied as Neighborhood Assessments; and
- ii. The remaining Association Expenses shall be levied as Residential Assessments, and shall be allocated among the Owners of all of the Lots in the Properties as provided in Section 2(a) of this Article III.

The Board shall in good faith attempt to cause the budget and the Assessments to be levied against each Owner for the following year to be delivered to each Member at least thirty (30) days prior to the end of the current year.

SECTION 6. LIEN FOR ASSESSMENTS. All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with interest, collection and other costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on the property owned by each Owner in favor of the Association. All Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the real property records of Fort Bend County, Texas shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for Assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

SECTION 7. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien securing the Assessments provided for herein shall be subordinate to (i) liens of ad valorem taxes and (ii) the lien of any Mortgage which has been recorded in the real

property records of Fort Bend County, Texas. Sale or transfer of any Lot subject to this Declaration shall not affect the lien hereby created. However, the sale or transfer of any Lot pursuant to foreclosure of a Mortgage or any conveyance in lieu thereof, shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any Assessments which are not paid in full by the date due or such other date as may be specified by the Board shall be delinquent. Any delinquent Assessment shall commence to bear interest calculated from the due date at the rate of eighteen percent (18%) per annum or such other interest rate as the Board may from time to time determine which is not in excess of the maximum lawful rate of interest. If the Assessment is not paid when due, the lien herein retained and created against the affected Lot shall secure the Assessment due, interest thereon from the date due and payable, all costs of collection, court costs, reasonable attorney's fees actually incurred, and any other amount provided or permitted by law. In the event that the Assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit for collection against the Owner personally obligated to pay the Assessment or foreclose the lien created and reserved hereby against the Lot of such Owner.

The Association's lien is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien shall be or is required. By acquiring a Lot, an Owner grants to the Association a power of sale in connection with the Association's lien. By written resolution, the Board of Directors of the Association may appoint, from time to time, an officer, agent, trustee, or attorney of the Association to exercise the power of sale on behalf of the Association. The Association shall exercise its power of sale pursuant to the Texas Property Code, and any applicable revision(s), amendment(s), or recodifications thereof in effect at the time of the exercise of such power of sale. The Association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created hereby. Costs of foreclosure may be added to the amount owed by the Owner to the Association. An Owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the Owner's debt. The Association may bid for and purchase the Lot at the foreclosure sale utilizing funds of the Association. The Association may own, lease, encumber, exchange, sell, or convey a Lot. The purchaser at any such foreclosure sale shall be entitled to sue for recovery of possession of the Lot by an action of forcible detainer without the necessity of giving any notice to the former owner or owners of the Lot sold at foreclosure. Nothing herein shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien. At any time before a nonjudicial foreclosure sale, an Owner of a Lot may avoid foreclosure by paying all amounts due the Association. Foreclosure of a tax lien attaching against a Lot under Chapter 32, Tax

Code, shall not discharge the Association's lien under this paragraph for amounts becoming due to the Association after the date of foreclosure of the tax lien.

No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, by non-use of Common Area or abandonment of the Lot owned by such Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of Declarant and each other Owner.

All payments shall be applied first to costs and attorney's fees, then to interest, and then to delinquent Assessments.

SECTION 9. ASSESSMENT OBLIGATION OF DECLARANT. Subject to the further provisions hereof, Declarant, on behalf of itself and its successors and assigns to whom its rights as Declarant are expressly assigned, covenants and agrees to pay the Assessments as provided herein for the Lots (other than unplatted Lots) that it owns. However, as long as the Class "B" membership exists in the Association, the Declarant may annually elect, by written notice to the Association, either to pay Assessments on its Lots as herein provided or to pay the Association the difference between the amount of Assessments collected on all other Lots subject to assessment and the amount of the budgeted expenditures which the Board anticipates will be incurred to operate the Association during the year. The subsidy may be paid by the Declarant in increments throughout the year as funds are needed by the Association. The payment by Declarant of such a subsidy in any year in lieu of Assessments shall under no circumstances obligate the Declarant to pay a subsidy in a future year or years.

The Declarant may also elect to pay Assessments to the Association in advance which are credited to future Assessments when due or to make loans to the Association. In the event of a loan, the loan and interest thereon at the rate of ten percent (10%) per annum or such other rate as may be agreed upon by the parties, shall be payable by the Association to the Declarant from future Assessments collected by the Association. All loans, if any, shall be evidenced by promissory notes executed by the Association.

ARTICLE IV RIGHTS IN THE COMMON AREA

SECTION 1. OWNER'S RIGHTS OF ENJOYMENT. Subject to the further provisions of this Section, every Member shall have a right of enjoyment to the

recreational facilities or amenities located on the Common Area, and such right shall be appurtenant to and shall pass with the title to the Lot owned by such Member. Such right of enjoyment shall be subject to the following:

- (a) The Association shall have the right to charge reasonable admission and other fees for the use of any facility situated upon the Common Area.
- (b) The Association shall have the right to borrow money and to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred.
- (c) The Association shall have the right to take such steps as are reasonably necessary to protect the Common Area against foreclosure of any such mortgage.
- (d) The Association shall have the right to suspend the enjoyment rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid in excess of thirty (30) days.
- (e) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Common Area, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.
- (f) The Association shall have the right to dedicate, sell or convey all or any part of the Common Area and the right to grant or dedicate easements over the Common Area to public or private utility companies.
- (g) The Association shall have the right to enter into agreements pursuant to which individuals who are not Members of the Association are granted the right to use the Common Area and the facilities located thereupon.

SECTION 2. DELEGATION OF USE. Each Member shall have the right to extend his right of enjoyment to the Common Area to the members of his family and to such guests or other persons as may be permitted by the Association. An Owner shall be deemed to have made a delegation of all rights to use the Common Area to the Occupants of any leased residence.

SECTION 3. EASEMENTS-GENERAL. Easements for the installation and maintenance of utilities are reserved as shown and provided for on the plats of the Properties and/or as dedicated by separate instruments. Neither Declarant nor any

utility company or authorized political subdivision using the easements referred to herein shall be liable for any damages done by them or their assigns, agents, employees or servants, to fences, walls, shrubbery, trees, flowers, improvements or other property of the Owner situated on the land covered by such easements as a result of construction, maintenance or repair work conducted by such parties or their assigns, agents, employees or servants.

SECTION 4. EASEMENTS FOR UTILITIES AND PUBLIC SERVICES.

(a) There is hereby granted to the Association, to Fort Bend County, and to any other public authority or agency, utility district, or public or private utility company, a perpetual easement upon, over, under, and across (i) the Common Area, and (ii) those portions of all Lots as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems and retention ponds, electrical, gas, telephone, water and sewer lines, street lights, street signs and traffic signs; provided, however, that such easements shall not unreasonably affect the ability to develop, market or the value of any Lot. To the extent possible, utility lines and facilities serving the Properties and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permitted for the providing utility company or other supplier or servicer, with respect to the portions of the Properties encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to excavate or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) There is also hereby granted to Fort Bend County and to such other governmental authority or agency as shall from time to time have jurisdiction over the Properties (or any portion thereof) with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over and across all of the Properties for purposes of performing such duties and activities related to law enforcement and fire protection in the Properties as shall be required or appropriate from time to time by such governmental authorities under applicable law.

SECTION 5. EASEMENTS FOR ASSOCIATION. There is hereby granted a general right and easement to the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or any portion thereof in the performance of their respective duties or the enforcement of the provisions of this Declaration. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or Occupant of the residence directly affected thereby.

SECTION 6. TELECOMMUNICATION SERVICES. Some or all of the following telecommunication services may be provided by one or more different utility companies to the Single Family Residences with the Properties: (i) local and long-distance telephone service; (ii) voice mail service; (iii) cable television service; (iv) central home systems for fire and burglary detection; (v) electronic utility meter reading systems; (vi) electronic mail systems; and (vii) other similar telecommunication services. The Builder Guidelines adopted by the Firethorne ARC may require that each Single Family Residence constructed in the Properties include wiring and other necessary facilities to enable the Single Family Residence access to telecommunication services. The Firethorne ARC shall have the right from time to time to promulgate specifications for the wiring and other necessary facilities to be installed. The installation of such wiring in a Single Family Residence does not obligate the Owner to accept or pay for any of the telecommunication services that may be provided within the Properties.

SECTION 7. SECURITY SERVICES.

(a) Security Services. The Association may enter into contracts for patrol services within the Properties. The Board shall be permitted to modify or cancel existing services provided, if any, or to provide additional services. Nothing contained herein is a representation as to what services will or will not be provided and the Association is not obligated to provide patrol services.

(b) DISCLAIMER CONCERNING SECURITY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, HOWEVER, AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE FIRETHORNE ARC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT, THE FIRETHORNE ARC OR OTHER PROVIDER MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, THE FIRETHORNE ARC, THE

DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, THE FIRETHORNE ARC, THE DECLARANT, OR ANY SUCCESSOR DECLARANT AND THEIR AGENTS HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

SECTION 8. RIGHTS OF DECLARANT DURING CONSTRUCTION AND SALE PERIOD. Notwithstanding any provisions contained in this Declaration, until the Declarant has developed and sold all of its land within the Properties, it shall be expressly permissible for Declarant and any Owner approved by Declarant to maintain upon such portion of the Properties as Declarant may deem necessary, such facilities, and carry on such activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such Owner's development, construction, and sales activities related to their properties, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Properties; the right to carry on sales and promotional activities in the Properties; the right to place signs in the Common Area and in road rights-of-way within the Properties; and the right to construct and operate business offices, construction trailers, model residences, information and sales offices. Declarant and any such Owner may use residences owned or leased by Declarant or such Owner as model residences and sales offices.

SECTION 9. NO PARTITION. There shall be no partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring and disposing of title to real property which may or may not be subject to this Declaration.

ARTICLE V INSURANCE AND CASUALTY LOSSES

SECTION 1. INSURANCE. The Association's Board of Directors, or its duly authorized agent, shall have the authority, but not the obligation, to obtain blanket all-risk casualty insurance for all insurable improvements on the Common Area, or if blanket all-risk coverage is not reasonably available, an insurance policy providing fire and extended coverage. In addition to casualty insurance on the Common Area, the

Association may, upon request of a Neighborhood, obtain casualty insurance on the Exclusive Common Area within the Neighborhood. Such insurance policies shall be in such amount or amounts as the Board of Directors deems appropriate.

The Board may also obtain a public liability policy covering the Common Area and Exclusive Common Area, insuring the Association and its Members for all damages or injury caused by the negligence of the Association, its agents, the Members or Occupants, in such amount as the Board deems appropriate.

Premiums for all insurance on the Common Area shall be Association Expenses and shall be included in the Residential Assessments and the premiums for insurance on Exclusive Common Area shall be included in the Neighborhood Assessment of the Neighborhood(s) benefitted thereby. In addition to the other insurance discussed in this Section, the Board may also obtain, as an Association Expense payable from Residential Assessments, (i) worker's compensation insurance, and the Board shall obtain such insurance if and to the extent required by law, (ii) directors' and officers' liability coverage, and (iii) a fidelity bond or fidelity insurance on directors, officers, employees, and other Persons handling or responsible for the Association's funds.

SECTION 2. DAMAGE AND DESTRUCTION. Immediately after damage or destruction by fire or other casualty of all or any part of the property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and the repair or reconstruction of the damaged or destroyed property, to the extent insurance proceeds are available for such purpose. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition which existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. In the event that insurance proceeds are unavailable to repair or reconstruct the Common Area or the Exclusive Common Area of any Neighborhood, the damaged or destroyed property shall be restored to its natural state and maintained by the Association in a neat and attractive condition. If insurance proceeds are insufficient to cover a repair or reconstruction, the Board may levy a special assessment to cover the shortfall, subject to the requirements of Section 5 of Article III above.

ARTICLE VI ARCHITECTURAL STANDARDS AND RESTRICTIONS

SECTION 1. PURPOSE. In order to establish and preserve a harmonious and aesthetically pleasing design for the Firethorne project and to protect and promote the value of the Properties, the Lots shall be subject to the restrictions set forth in this Article VI. Every grantee of any interest in a Lot by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article.

SECTION 2. FIRETHORNE ARCHITECTURAL REVIEW COMMITTEE; MODIFICATIONS COMMITTEE. There is hereby established the Firethorne Architectural Review Committee (sometimes hereinafter called the "Firethorne ARC"), which shall have exclusive jurisdiction over all original construction on the Lots and over modifications, additions, or alterations made on or to the residences and other improvements on the Lots.

The Firethorne ARC shall (i) adopt such standards or guidelines as it determines for the construction or alteration of improvements on the Lots in the Properties (the "Builder Guidelines") and for landscaping (the "Landscaping Guidelines"), which guidelines may vary for different portions of the Properties or different platted subdivisions or Neighborhoods within the Properties, and (ii) establish application and review procedures for plans and specifications. The Firethorne ARC shall make the the Builder Guidelines and Landscaping Guidelines available to Owners and Builders who seek to engage in development of or construction upon a Lot and who shall conduct their operations strictly in accordance therewith. The Firethorne ARC may establish and charge reasonable fees for its review of plans hereunder.

The Firethorne ARC shall consist of three (3) members. Until the date on which it has sold all of its Lots within the Properties, the Declarant shall have the right to appoint all members of the Firethorne ARC as well as the right to remove any member at any time. There shall be no surrender of this right prior to that time, except by a written instrument executed by Declarant and recorded in the real property records of Fort Bend County, Texas. Following the expiration of such right, the Board of Directors shall have the right to appoint and remove the members of the Firethorne ARC. The Firethorne ARC is authorized, but not obligated, to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Firethorne ARC in performing its functions set forth herein. The costs of the services of such consultants shall be an Association Expense except to the extent such costs are covered by a plan review fee established by the Firethorne ARC, if it elects to establish such fee.

The Board of Directors shall have the right, but not the obligation, at any time to create a separate committee known as the "Modifications Committee" to perform the obligations of the Firethorne ARC hereinafter specified with respect to the review of plans for the alteration or modification of the improvements on a Lot after construction of the initial improvements. The Board shall also have the right to abolish such committee at any time. In the event such committee is created it shall consist of three (3) members appointed by the Board and the Board shall have the power to remove a member at any time. In the event a Modifications Committee is created, such committee shall have all of the duties and powers granted to the Firethorne ARC in this Declaration with respect to the alteration or modification of improvements on a Lot in the Properties unless or until the Board determines there should no longer be two (2) separate committees and abolishes the Modifications Committee, in which event all such duties and powers shall thereafter be restored to the Firethorne ARC.

SECTION 3. APPROVAL OF PLANS. No construction of improvements, or modifications, additions, or alterations to existing improvements, shall be commenced or maintained by or on behalf of any Owner with respect to any Lot in the Properties, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface a different color than the one previously approved), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Firethorne ARC, a survey showing the location of existing trees of six (6) inches in diameter at a height of four (4) feet above ground and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Firethorne ARC as to the compliance of such plans and specifications with this Declaration, the applicable Supplemental Declaration(s), and the Builder Guidelines, including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Firethorne ARC, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved." The Firethorne ARC may establish a reasonable fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his improvements, to paint the interior of the improvements on his Lot any color desired, or to repaint or restain the exterior of the improvements on his Lot with the same color which has been previously approved for such improvements. The Firethorne ARC shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

Upon approval of plans and specifications, no further approval under this Article VI shall be required with respect thereto, unless construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. The Firethorne ARC may disapprove plans and specifications for any reason which is consistent with the objects and purposes of this Declaration as determined by the Firethorne ARC from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

SECTION 4. LANDSCAPING APPROVAL. To preserve the aesthetic appearance of the Firethorne project, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed on a Lot in the Properties unless and until the plans therefor have been submitted to and approved in writing by

the Firethorne ARC. In the installation of landscaping and maintenance of his Lot, each Owner shall comply with the Landscaping Guidelines adopted by the Firethorne ARC from time to time.

SECTION 5. APPROVAL NOT A GUARANTEE OR VARIANCE. The review and approval of plans pursuant to this Article is made on the basis of aesthetic considerations only and no approval of plans and specifications and no publication of the Builder Guidelines and/or the Landscaping Guidelines shall be construed as representing or implying that such plans, specifications, or guidelines will, if followed, result in properly designed improvements. Such approvals and design guidelines shall in no event be construed as representing or guaranteeing that any improvements built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, the Firethorne ARC, nor any of their respective officers, partners, directors, employees, or members, shall be responsible or liable in damages or otherwise to any Person by reason of mistake of judgment, negligence or nonfeasance arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications. The purpose of such review primarily is to conform the aesthetic appearances of development within the Properties.

In addition, the approval of plans pursuant to this Article shall not be deemed to be a variance from the specific restrictions of this Declaration, the Builder Guidelines or the Landscaping Guidelines. All variances must be issued in accordance with the provisions of Section 8 of this Article.

SECTION 6. RIGHT TO INSPECT. Any member of the Board of Directors or the Firethorne ARC and their representatives shall have the right, but not the obligation during reasonable hours to enter upon and inspect any Lot with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In the event the Firethorne ARC shall determine that such plans and specifications have not been approved or are not being complied with, the Firethorne ARC shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In addition to any other remedies available to the Association, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

SECTION 7. NO WAIVER OF FUTURE APPROVALS. The approval by the Firethorne ARC of any plans and specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

SECTION 8. VARIANCES. The Firethorne ARC may grant variances from compliance with the restrictions of this Declaration and from any of the Builder Guidelines and/or Landscaping Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, or (b) estop the Firethorne ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing, shall not be considered a hardship warranting a variance.

ARTICLE VII SPECIFIC USE RESTRICTIONS

SECTION 1. SINGLE FAMILY RESIDENCES. Each and every Lot in the Properties is hereby restricted to one (1) Single Family Residence and related outbuildings and improvements, including guest houses, servants quarters and greenhouses, and use for single-family residential purposes exclusively and no Single Family Residence shall be occupied by more than a single family which for purposes hereof shall mean and refer to any number of individuals living together as a single household unit, and the household employees of such household unit.

No garage sale, yard sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or Occupant may conduct business activities within the Single Family Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (c) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. The Board is authorized to promulgate rules and regulations to insure that home businesses comply with the above standards and to make factual determinations regarding the impact of a home business on the residential character of the Properties. If, in the judgment of the Board, a home business has a detrimental impact on the residential quality of the Properties or otherwise constitutes a nuisance, it is authorized to require that the Owner cease the home business or alter it to the Board's satisfaction. Notwithstanding anything contained in this Section, the Association may sponsor a community wide garage sale or rummage sale at such location or locations as the Board deems appropriate from time to time. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other

form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Single Family Residence shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or by a Builder with the approval of the Declarant, with respect to the development and sale of the Lots and Single Family Residences in the Properties.

SECTION 2. LIVING AREA REQUIREMENTS. The total living area of the Single Family Residence on a Lot shall not be less than the applicable minimum number of square feet specified in the Supplemental Declaration applicable to such Lot, if any, or in the Builder Guidelines adopted by the Firethorne ARC which are applicable to such Lot.

SECTION 3. TYPE OF CONSTRUCTION. A minimum of 50% of the exterior wall area of all Single Family Residences, exclusive of doors and windows, shall be masonry or brick veneer construction, unless a variance from this restriction is specifically approved in writing by the Firethorne ARC. No detached garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Firethorne ARC. Every garage and accessory building (except a greenhouse) shall correspond in style, architecture and materials with the dwelling to which it is appurtenant. No structure of any kind or character which incorporates wood construction on the exterior shall be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

SECTION 4. GARAGES, DRIVEWAYS AND SIDEWALKS. Each Single Family Residence must have an attached or detached garage with an automatic garage door opener. Garage doors shall be kept closed except when opened for the entry or exit of vehicles. Each Owner shall construct and maintain at his expense a concrete driveway with a minimum width of ten (10) feet from the garage of his residence to the abutting Street, including the portion of the driveway in the street easement, and the Owner shall repair at his expense any damage to the Street occasioned by connecting the driveway thereto. Each Owner shall also maintain, repair and replace, when necessary, the sidewalk along the front of his Lot as well as the sidewalk on the side of corner Lots.

SECTION 5. ANTENNAE AND SATELLITE DISHES. No television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by the regulations promulgated under the Telecommunications Act of 1996, as amended from time to time. The Board of Directors of the Association or the Firethorne ARC is empowered to adopt rules governing the types of antennae that are permissible in the Properties and to establish

reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that receipt of an acceptable signal would not be impaired, an antenna permissible pursuant to the rules of the Firethorne ARC may only be installed in a side or rear yard location, not visible from the Street, and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations.

SECTION 6. ANIMALS AND PETS. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of a maximum of three (3) dogs, cats or other usual and common household pets (excluding in such maximum number, fish and birds); provided, however, those pets which are permitted to roam free, or which in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants within the Properties may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Single Family Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pet, the owner of a pet that has caused damage to property shall be responsible for compensating the owner of the damaged property, but the Association shall have no obligation to enforce such obligation. Animal control authorities shall be permitted to enter the Properties to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.

SECTION 7. WINDOW AIR CONDITIONERS. No window or wall type air conditioners shall be permitted to be used, erected, placed or maintained on or in any Single Family Residence.

SECTION 8. RENTING OR LEASING. Single Family Residences may be rented or leased only by written leases and subject to the following restrictions:

All tenants shall be subject to the terms and conditions of this Declaration and the rules and regulations promulgated by the Association as though such tenant were an Owner. Each Owner of a Single Family Residence agrees to cause his tenants to comply with this Declaration and the rules and regulations promulgated pursuant hereto, and is responsible and liable for all violations and losses caused by such tenants, notwithstanding the fact that such tenants are fully liable for any such violation. All provisions of this Declaration and of any rules and regulations promulgated pursuant hereto which govern the conduct of Owners of a Single Family Residence and which provide for sanctions against Owners shall also apply to all Occupants of a Single Family Residence even though such Occupants are not specifically mentioned. Each Owner who leases his residence shall provide the Association with the name of his tenant and a mailing address where such Owner can be contacted within thirty (30) days after entering into a lease.

SECTION 9. VEHICLES AND PARKING. The term “vehicles”, as used herein, shall refer to all motorized vehicles including, without limitation, automobiles, trucks, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, campers, buses, and vans. No vehicle may be parked or left upon any Lot in the Properties, except in a garage or other area designated by the Board, and in driveways for such temporary periods as may be specified by the Board from time to time. The parking of vehicles on Streets or within road rights-of-way is specifically prohibited; provided, however, the Board shall have no obligation to enforce this restriction if enforcement is unlawful or the Board deems enforcement to be economically infeasible or otherwise impractical. Any vehicle parked or left not in accordance with this section shall be considered a nuisance. No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles and vehicles authorized by the Board.

SECTION 10. DISPOSAL OF TRASH. No trash, rubbish, garbage, manure, debris, or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping ground for such materials. All such matter shall be placed in sanitary refuse containers constructed of metal, plastic or masonry materials with tight fitting sanitary covers or lids and placed in an area adequately screened from public view by planting or fencing. All rubbish, trash, and garbage shall be regularly removed and not allowed to accumulate. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal. In a manner consistent with good housekeeping, the Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense.

SECTION 11. DRAINAGE. Catchbasins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of a Lot may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains.

SECTION 12. CLOTHESLINES, GARBAGE CANS, WOODPILES, ETC. Clotheslines may not be placed on any Lot. Garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property.

SECTION 13. WEAPONS AND FIREWORKS. The use of fireworks, firearms and other weapons within the Properties is prohibited. The term “firearms” includes “B-B” guns, pellet guns, and small firearms of all types. Nothing contained in this Declaration shall be construed to require the Association to take action to enforce this Section.

SECTION 14. TEMPORARY BUILDINGS. Temporary buildings or structures shall not be permitted on any Lot; provided, however, Declarant may permit temporary toilet facilities, sales and construction offices and storage areas to be used by Builders in connection with the construction and sale of residences and by contractors performing land development activities within the Properties for Declarant. Builders may use garages as sales offices for the time during which such Builders are marketing homes. At the time of the sale of a Single Family Residence by a Builder any garage appurtenant to such residence used for sales purposes must be reconverted to a functional garage in compliance with the plans approved by the Firethorne ARC. A storage building may be located in the backyard of a Lot if it complies with applicable guidelines adopted by the Modifications Committee.

SECTION 15. GRASS AND SHRUBBERY. The Owner of each Lot shall install or cause to be installed solid sod grass in the area between the front of his residence and the curb line of the abutting Street and the side yard of such Lot out to the curb on all corner Lots and landscape his Lot in accordance with the Landscaping Guidelines. Grass and weeds shall be kept mowed to prevent unsightly appearance, and all curbs, drives and walkways shall be kept edged. Dead or damaged trees shall be promptly removed or replaced, and if not removed by the Owner upon request, then the Association may remove or cause to be removed such trees at the Owner's expense and shall not be liable for damage caused by such removal. The Association may plant, install and maintain shrubbery and other screening devices on utility easements around boxes, transformers and other above-ground utility equipment, and mow and maintain the grass around such areas. The Association shall have the right to enter upon the Lots to plant, install, maintain and replace such shrubbery or other screening devices, and mow and maintain grass around such areas following reasonable advance notice to the Owner of such Lot.

SECTION 16. TRAFFIC SIGHT AREAS. All Lots located at Street intersections shall be landscaped so as to permit safe sight across the Street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

SECTION 17. MAILBOXES. Each Single Family Residence shall have an individual mailbox or assigned space in a cluster box which complies with U.S. Postal Service requirements and the specifications for mailboxes approved or prescribed by the Board or the Firethorne ARC. The placement of an individual mailbox on a Lot shall be at a location approved by the Firethorne ARC. Each Lot shall have a house number identifying its street address made of materials and a color or colors specified by the Firethorne ARC in keeping with the overall character and aesthetics of the community. Different materials and/or colors for street numbers may be specified by the Firethorne ARC for different Neighborhoods or platted subdivisions.

SECTION 18. DISPOSAL UNITS. Each kitchen in each Single Family Residence shall be equipped with a garbage disposal unit in a serviceable condition.

SECTION 19. PRIVATE UTILITY LINES. All electrical, tele-phone, telecommunication, natural gas and other utility lines and facilities which are located on a Lot and are not owned by a governmental entity or a public utility company shall be installed underground unless otherwise approved in writing by the Firethorne ARC.

SECTION 20. ROOFTOP ELEMENTS. All stack vents and attic ventilators shall be located on the rear slopes of roofs and mounted perpendicular to the ground plate. All exposed roof stack vents, flashings, attic ventilators, etc. on each Single Family Residence must be painted to match the color of the roof of the Single Family Residence unless otherwise approved by the Firethorne ARC. No solar collectors shall be allowed on any roof slope visible from a Street, the Common Area or any other Lot.

SECTION 21. DECORATIONS. On front lawns of Lots and on any portion of a Lot visible from any Street, there shall be no decorative appurtenances placed, such as sculptures, birdbaths and birdhouses, fountains or other decorative embellishments of any kind unless such specific item has been approved in writing by the Firethorne ARC as part of the landscaping plan for such Lot. Such decorations are limited in height to eighteen (18) inches and must be positioned within a landscape bed screened at the base with landscape materials.

SECTION 22. PLAYGROUND EQUIPMENT. All playground equipment on a Lot must be placed at the rear of the Lot at a location approved by the Firethorne ARC and behind a fence or otherwise screened from public view from any Street abutting the Lot. Such equipment must not be visible from the fronting Street and/or side Street in the case of a corner Lot.

SECTION 23. SIGNS. No signs, billboards, posters, or advertising devices of any kind shall be permitted on any Lot without the prior written consent of the Firethorne ARC other than (a) one sign not in excess of a size prescribed by the Firethorne ARC advertising a particular Lot and residential structure on which the sign is situated for sale or rent, or (b) one sign to identify the particular Lot during the period of construction of a Single Family Residence thereon as for sale; provided, however, no sign advertising a Lot and residential structure for sale shall contain the word "foreclosure" or any derivative of such word. The right is reserved by Declarant to construct and maintain, or to allow Builders to construct and maintain signs and other advertising devices on land they own and on the Common Area as is customary in connection with the sale of developed tracts and newly constructed residential dwellings. In addition, the Declarant and the Association shall have the right to erect and maintain identifying signs and monuments at entrances to subdivisions.

In addition to any other remedies provided for herein, the Board of Directors or its duly authorized agent shall have the power to enter upon a Lot to remove any sign which violates this Section provided the violating Owner has been given forty-eight hours' written notice by the Board of Directors of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred, shall be

assessed against the violating Owner and shall be collected as provided for herein for the collection of Assessments.

SECTION 24. FENCES. No fence or wall shall be erected on any Lot nearer to the Street than the minimum setback from the Street shown on the plat of the subdivision containing such Lot. Further, unless otherwise approved by the Firethorne ARC, no fence shall be constructed across or within a utility easement. The plans for all fences must be approved by the Firethorne ARC which shall have the power to specify acceptable materials. No chain link fences shall be permitted within the Properties.

SECTION 25. WINDOW TREATMENTS. Within three (3) months of occupying a residence, the Owner of such residence shall install window treatments or coverings in accordance with the Builder Guidelines. Expressly prohibited both before and after the initial three (3) months of occupancy are any temporary or disposable coverings not consistent with the aesthetics of the Subdivisions, such as reflective materials, sheets, newspaper, shower curtains, fabric not sewn into finished curtains or draperies, paper, aluminum foil, plastic, cardboard, or other materials not expressly made for or commonly used by the general public for permanent window coverings in a development of the same caliber as the Subdivisions. All window coverings must have a neutral color when viewed from the Street with either a white or off-white lining. In the case of shutters, white or a wood tone color are permitted.

SECTION 26. OWNER'S MAINTENANCE. Each Owner and Occupant of a Lot shall at all times be obligated to maintain his property and all improvements thereupon (including the area between the boundary lines of his Lot and curb or edge of adjacent Streets), so as to keep same in a clean, sightly and safe condition and to conform with the Landscaping Guidelines and any specific standards which the Board of Directors may adopt by resolution for the Properties. Unless expressly assumed by the Association, an Owner's maintenance obligation shall include, but not be limited to: the maintenance of all visible exterior surfaces of all buildings and other improvements; the prompt removal of all paper, debris, and refuse; the removal and replacement of dead and diseased trees and plantings; the repair, replacement, cleaning and relamping of all signs and lighting fixtures; the mowing, watering, fertilizing, weeding, replanting and replacing of all approved landscaping; and, during construction, the cleaning of dirt, construction debris and other construction-related refuse from Streets and storm drains and inlets. In the event an Owner fails to maintain his property as specified above, the Association may enter upon the applicable Lot to perform the necessary work as more specifically set forth in Section 8 of Article X hereof.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTY AND DEANNEXATION

SECTION 1. UNILATERAL ANNEXATION BY DECLARANT. The Declarant, as the owner thereof or, if not the owner, with the consent of the owner thereof, shall have the unilateral right, privilege, and option, but not the obligation, at any time and from

time to time to annex additional real property adjacent to or in the vicinity of the Subdivisions to the jurisdiction of the Association by filing for record either a Supplemental Declaration in respect to the property being annexed which subjects the lots within the annexed property to assessment by the Association on a uniform basis with all other Lots within the Association's jurisdiction or an instrument which describes the annexed property and subjects the lots therein to all of the provisions of this Declaration. Any such annexation shall be effective as to the property described therein upon the filing for record of such Supplemental Declaration or other instrument unless otherwise provided therein.

The right reserved by the Declarant to annex additional land shall not be implied or construed so as to impose any obligation upon Declarant to subject any of the property it owns other than the property within the Subdivisions to this Declaration or to the jurisdiction of the Association. If such additional land is not annexed, Declarant has no obligation to impose any covenants and restrictions similar to those contained herein upon such land nor shall anything contained herein be construed to limit or restrict the use to which such land may be put by Declarant or by any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

SECTION 2. OTHER ANNEXATIONS. With the consent of the owner thereof, the Association may annex other real property to the jurisdiction of the Association. Such annexation shall require the affirmative vote of a majority of the Class "A" Members present in person or by proxy at a meeting called for such purpose, and of the Declarant, so long as the Declarant owns property within the jurisdiction of the Association.

Annexation pursuant to this Section 2 shall be accomplished by filing of record in the real property records of Fort Bend County, Texas, an annexation agreement describing the property being annexed. Such annexation agreement shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein.

SECTION 3. RIGHTS OF OWNERS OF ANNEXED AREA. The Owners of lots in annexed property shall be entitled to use the Common Area in the same manner and to the same extent of the Owners of all other property subject to the jurisdiction of the Association provided that such lots are subject to Assessments by the Association on a uniform basis, consistent with the provisions of this Declaration.

SECTION 4. DEANNEXATIONS. Without the approval of any other Owners or Members, the Declarant shall have the exclusive right to deannex and remove any portion of the Properties which is not yet developed at the time of deannexation from the provisions of this Declaration and the jurisdiction of the Association. Such deannexation

shall be accomplished by the execution and filing for record an instrument setting forth the land being deannexed.

ARTICLE IX MORTGAGEE PROVISIONS

The following provisions are for the benefit of the holders of Mortgages. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained herein or therein.

SECTION 1. NOTICES OF ACTION. A Mortgagee who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the description of the affected property), will be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) any condemnation loss or any casualty loss which affects the property on which there is a mortgage or deed of trust held, insured, or guaranteed by such Mortgagee; or
- (c) any delinquency in the payment of Assessments or charges owed by an Owner of the property subject to the Mortgage of such Mortgagee, where such delinquency has continued for a period of sixty (60) days.

SECTION 2. NO PRIORITY. No provision of this Declaration gives or shall be construed as giving any Owner or other party priority over any rights of the Mortgagees in the case of distribution of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

SECTION 3. NOTICE TO ASSOCIATION. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's property.

ARTICLE X GENERAL PROVISIONS

SECTION 1. TERM. Subject to amendment in accordance with the further provisions hereof, the provisions of this Declaration shall run with and bind the land and shall be and remain in effect for a period of forty (40) years after the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by the Owners of not less than a majority of the Lots subject to the provisions hereof agreeing to terminate this Declaration has been recorded within the year immediately preceding

the beginning of a ten (10) year renewal period, in which case this Declaration shall terminate at the end of its original term or the applicable extension period. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration may be extended and renewed as provided in this Section.

SECTION 2. SEVERABILITY. Invalidation of any one of these covenants by judgment or other court order shall in no wise affect any other provisions, which shall remain in full force and effect except as to any terms and provisions which are invalidated.

SECTION 3. GENDER AND GRAMMAR. The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

SECTION 4. TITLES. The titles of this Declaration of Articles and Sections contained herein are included for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

SECTION 5. AMENDMENT. This Declaration may be amended unilaterally at any time and from time to time by Declarant without approval by the Members or any Owners (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is required by an institutional or governmental lender or purchaser 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 the property subject to this Declaration; (c) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the property subject to this Declaration; or (d) for any other purpose, provided that the amendment has no material adverse effect upon any right of any Owner or that the Owner or Owners so affected have consented thereto.

In addition to the amendments described above, this Declaration may be amended at any time by an instrument signed by the Owners of more than fifty percent (50%) of the Lots subject to this Declaration and, as long as the Class "B" Membership exists, the Declarant; provided, however, no amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant. Any amendment to this Declaration must be recorded in the real property records of Fort Bend County, Texas.

SECTION 6. MERGER AND CONSOLIDATION. Upon a merger or consolidation of the Association with another non-profit corporation organized for the same or similar purposes, the Association's properties, rights, and obligations may be

transferred to the surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions and restrictions established by this Declaration, together with the covenants, conditions and restrictions applicable to the properties of the other association as one scheme. No merger or consolidation shall be permitted except with the approval by two-thirds (2/3rds) vote of the eligible Class "A" Members present in person or by proxy at a meeting called for such purpose and, until the termination of the Class "B" Membership, the Declarant.

SECTION 7. DISSOLUTION. The Association may be dissolved with the approval by two-thirds (2/3rds) vote of the eligible Class "A" Members present in person or by proxy at a meeting called for such purpose and, until the termination of the Class "B" Membership, the Declarant. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

SECTION 8. ENFORCEMENT. Each Owner and Occupant shall comply strictly with the covenants, conditions, and restrictions set forth in this Declaration, as may be amended from time to time, and with the rules and regulations adopted by the Board. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration or the rules and regulations shall be grounds for an action to recover sums due for damages, injunctive relief, or any other remedy available at law or in equity, maintainable by the Board, on behalf of the Association, or by any Owner of a portion of the Properties. Failure of the Board or any other Person to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall also have the right to enforce, by any proceeding at law or in equity, any other restrictions, conditions, covenants and liens imposed upon any portion of the Properties which by the terms of the instrument creating same grant the Association the power to enforce same, and failure of the Association to enforce such provisions shall in no event be deemed a waiver of the right to do so thereafter.

In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, its rules and regulations, the Builder Guidelines, or the Landscaping Guidelines. Except in the case of emergency situations, and as otherwise specified herein, the Association shall give the violating Owner ten (10) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable

attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of Assessments.

SECTION 9. RIGHT OF ENTRY. The Association shall have the right, but not the obligation, to enter into any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association's rules, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

SECTION 10. NOTICE OF SALE OR TRANSFER OF TITLE. In the event that an Owner sells or otherwise transfers title to his or her Lot, as specified in Section 3 of Article III such Owner shall give the Association written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Association, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of Assessments, notwithstanding the transfer of title to the Lot.

SECTION 11. CUMULATIVE EFFECT; CONFLICT. The covenants, restrictions and provisions of this Declaration shall be cumulative with the Supplemental Declarations; provided, however, in the event of conflict between the provisions of this Declaration and any Supplemental Declaration, the provisions of this Declaration shall prevail, it being intended that all Supplemental Declarations be subject and subordinate to this Declaration.

IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions is executed as of the 7th day of March, 2005

JDC/FIRETHORNE, LTD.,
a Texas limited partnership

By: its general partner JDC GP, INC., a Texas corporation

By: 

Its:

Wayne C. Meyer
Vice President

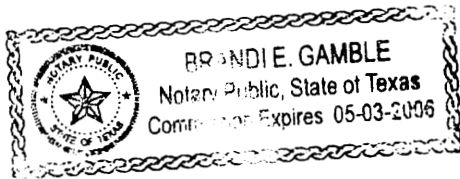
THE STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on February 24 2004⁵ by Wayne C. Meyer, Vice-President of JDC GP, Inc., a Texas corporation which is the general partner of JDC/FIRETHORNE, LTD., a Texas limited partnership, on behalf of said limited partnership.

(SEAL)



Brandi E. Gamble

Notary Public in and for
the State of Texas

Brandi E. Gamble

Name printed or typed

My commission expires:

05/03/2006

After recording,
please return to:
Firethorne
Brandi Gamble
13050 Barker Cypress
Cypress, TX 77429


**LIENHOLDER'S CONSENT AND SUBORDINATION
TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FIRETHORNE**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

That Residential Funding Corporation, the owner and holder of that certain promissory note dated September 29, 2003 in the original principal amount of \$24,000,000, executed by JDC/FIRETHORNE, LTD., a Texas limited partnership, payable to the order of the undersigned, secured by a deed of trust lien on all or a portion of the property subject to the foregoing Declaration, as evidenced by deed of trust instrument filed under County Clerk's File No. 2003138621 and recorded in the Official Public Records of Real Property of Fort Bend County, Texas, executes this instrument to subordinate the lien of such deed of trust to the foregoing Declaration of Covenants, Conditions and Restrictions for Firethorne.

EXECUTED the 7th day of March, ^{2005.}~~2004.~~

Residential Funding Corporation,
a Delaware corporation

By: 
Terence E. Shiffr
Its: Director

AS PER ORIGINAL

AS PER ORIGINAL

THE STATE OF Maryland §
COUNTY OF Montgomery §

The foregoing instrument was acknowledged before me on the 7 day of March, 2005 by Terence Stifter, Director of Residential Funding Corporation, a Delaware corporation, on behalf of said corporation.

(SEAL)

Mary E. Rozansky
Notary Public in and for
the State of Maryland

Name printed or typed
My commission expires:

MARY E ROZANSKY
NOTARY PUBLIC FOR THE STATE OF MARYLAND
My Commission Expires February 1, 2006

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dr. Dianne Wilson

2005 Mar 23 10:18 AM

2005032616

CAM \$85.00

Dianne Wilson, Ph.D. COUNTY CLERK
FT BEND COUNTY TEXAS