

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

*for*  
AUTUMN ACRES SECTION TWO  
A MONTGOMERY COUNTY SUBDIVISION

THE STATE OF TEXAS           §  
  §       **KNOW ALL PERSONS BY THESE PRESENTS:**  
COUNTY OF MONTGOMERY   §

WHEREAS, M.J.M. INVESTMENTS, a Texas General partnership, acting herein by and through Tom A. Martin, a General Partner, and Mark W. Martin, a General Partner, and BARATO CAPITAL, INC. Jeffrey D. Lochore, President a General Partner, (the "Declarant") are the owners of that certain property known as Autumn Acres, Section Two, a subdivision of 43.280 acres of land in the Pryor Bryan Survey A-76, according to the map or plat recorded in Cabinet Z, Sheets 1173 of the Map Records of Montgomery County, Texas (the "Subdivision"); and

WHEREAS, the Declarant desires to establish a uniform plan for the development, improvement and sale of the Lots in the Subdivision, and to ensure the preservation of such uniform plan for the benefit of both the present and future owners of residential lots in the Subdivision.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots within the Subdivision shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and charges, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots in the Subdivision. The covenants, and restrictions shall run with the Lots in the Subdivision and be binding upon all parties having or acquiring any right, title, or interest in said real property or any part thereof, their heirs, predecessors, successors and assigns, and shall inure to the benefit of each Owner thereof.

**(ARTICLE D) DEFINITIONS**

As used in this Declaration, the terms set forth below shall have the following meanings:

**SECTION 1.1. ARCHITECTURAL CONTROL COMMITTEE** - The Architectural Control Committee established and empowered in accordance with Article V of the Declaration.

**SECTION 1.2. ARTICLES OF INCORPORATION** - The Articles of Incorporation of the Association.

**SECTION 1.3. ASSESSMENT(S)** - An Annual Assessment, Special Assessment, or Reimbursement Assessment.

**SECTION 1.4. ASSOCIATION** - AUTUMN ACRES SECTION TWO PROPERTY OWNERS ASSOCIATION, INC., a Texas Non-Profit Corporation, its successors and assigns.

**SECTION 1.5. BOARD OR BOARD OF DIRECTORS** - The Board of Directors of the Association as elected in accordance with the Articles of Incorporation and the Bylaws.

**SECTION 1.6. BYLAWS** - The Bylaws of the Association.

**SECTION 1.7. COMMON AREAS** - Real property, if any, (including the improvements thereto) owned by the Association for the common use and/or enjoyment of the Owners. This term shall also apply to any Lots owned by the Association for the common use and/or enjoyment of the Owners, if any.

**SECTION 1.8. DECLARANT** - Shall mean and refer to M.J.M. INVESTMENTS, a Texas General Partnership, its successors and assigns so designated in writing.

**SECTION 1.9. DECLARATION** - The covenants, conditions, restrictions, easements, reservations and stipulations that shall be applicable to and govern the improvement, use, occupancy, and conveyance of all the Lots in the Subdivision set out in this instrument or any amendment thereto.

**SECTION 1.10. EASEMENT** - The various utility, maintenance, and other easements of record, shown on the Plat or created or referenced to in this Declaration.

**SECTION 1.11. EFFECTIVE DATE** - The effective date being January 1, 2008, of this Declaration is filed in the Official Public Records of Real Property of Montgomery County, Texas.

**SECTION 1.12. LIEN** - The lien established in Article VII of the Declaration, which secures the payment of the Assessments.

**SECTION 1.13. LOT (S)** - Each of the numbered Lots (excluding the Reserves) shown on the Plat of the Subdivision, or any other property brought within the jurisdiction of the Association, save and except any Lots ever owned by the Association as Common Area, if any.

**SECTION 1.14. MAINTENANCE FUND** - Any accumulation of the Assessments collected by the Association in accordance with the provisions of this Declaration and interest, penalties, late fees, charges and other sums and revenues collected by the Association pursuant to the provisions of this Declaration.

**SECTION 1.15. MEMBER (S)** - All Owners of Lots who are members of the Association as provided in Article VII of this Declaration.

**SECTION 1.16. MORTGAGE** - A security interest, mortgage, deed of trust, or lien instrument granted by an Owner to secure the payment of a loan made to such Owner, duly recorded in the office of the County Clerk of Montgomery County, Texas, and creating a lien or security interest encumbering a Lot and some or all improvements thereon.

**SECTION 1.17. OCCUPANT** - Occupant shall mean and refer to the occupants of any Residential Dwelling constructed or placed on a Lot.

**SECTION 1.18. OWNER (S)** - Any person or persons, firm, corporation or other entity or any combination thereof that is the record owner of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as a security for the performance of an obligation.

**SECTION 1.19. PLANS** - The final construction plans and specifications (including a related site plan) of any Residential Dwelling, building or improvement of any kind to be erected, placed, constructed, maintained or altered on any Lot.

**SECTION 1.20. PLAT (S)** - The official plat of Autumn Acres, Section Two, filed of record in Cabinet Z, Sheets 1173 of the Map Records of Montgomery County, Texas, and of any other subdivision made subject to the terms of this Declaration.

**SECTION 1.21. PROPERTY** - All of that certain property known as Autumn Acres, Section Two, according to the map or plat thereof recorded in Cabinet Z, Sheets 1173 of the Map Records of Montgomery County, Texas, and any additional property made subject to the terms of this Declaration.

**SECTION 1.22. REIMBURSEMENT ASSESSMENT** - A charge against a particular Owner and/or Occupant and their Lot for the purpose of reimbursing the Association for expenditures and other costs of the Association incurred in curing any violation, attributable to the Owner, for any violation of this Declaration, the Articles of Incorporation, Bylaws, Architectural Guidelines, or any Rules and Regulations, pursuant to Article VII, Section 7.10 hereof.

**SECTION 1.23. RESERVE (S)** - The Reserve(s) as shown on the Plat, to include the Detention Pond.

**SECTION 1.24. RESIDENTIAL DWELLING** - The single-family residence and appurtenances placed on a Lot.

**SECTION 1.25. SUBDIVISION** - The Property, save and except the Reserves, together with all improvements now or hereafter situated thereon and all rights and appurtenances thereto.

## **(ARTICLE II) RESERVATIONS. EXCEPTIONS EASEMENTS AND DEDICATIONS**

**SECTION 2.1. PLAT** - The Plat is dedicated for use as such, subject to the limitations set forth therein, the streets and easements shown thereon, and such Plat, further, establishes certain restrictions applicable to the Subdivision, including, without limitation, certain minimum setback lines. All dedications, limitations, restrictions and reservations shown on the Plat are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said property and or any part thereof, whether specifically referred to therein or not.

**SECTION 2.2. RIGHT-OF-WAY AND EASEMENTS** - The Declarant reserves the easements and rights-of-way as shown on the Plat for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, water lines, storm drainage, gas, sewers, or any other utility Declarant sees fit to install in across and/or under the Property.

**SECTION 2.3. DECLARANT'S RIGHT TO MAKE CHANGES** - Declarant reserves the right to make changes in and additions to all easements discussed in this Article II for the purpose of most efficiently and economically installing the improvements.

**SECTION 2.4. LIABILITY** - No utility company using the easements herein referred to, shall be liable for any damages done by it or its assigns, agents, employees or servants, to fences, shrubbery, trees or flowers or other property situated on the land covered by said easements.

**SECTION 2.5. UTILITY EASEMENTS AND DRAINAGE** - Declarant, its successors or assigns reserves a sixteen (16) foot wide easement as shown on the recorded Plat Map, along all interior road right-of-way for the purpose of installing, operating, and maintaining utility lines and mains thereon, together with the right to trim and/or cut or remove any trees and/or brush and the right to locate guy wires, braces, and anchors wherever necessary, together with the right to install, operate and maintain gas lines, water wells and water lines and appurtenances, sewer lines, culverts, and drainage ditches, reserving the right of ingress and egress to such areas for any of the purposes mentioned above. Declarant also reserves the right to cause or permit drainage of surface waters over and/or through each Lot. The Owners and occupants of Lots shall have no causes of action against Declarant either at law or equity by reason of any damage caused by installing or maintaining the above mentioned installations or due to the drainage of surface right, discussed above. They are aware of the Drainage Easements along the East side of the pipeline, as well as the Build lines on both the front and rear of all lots. For Lots that have the pipeline running through there lot, they will observe all the rules that the owners of said pipeline set, and the building for those lots will no closer than 25 feet from the utility easement.

**SECTION 2.6. TITLE TO LOTS SUBJECT TO EASEMENTS** - It is expressly agreed and understood that the title conveyed by Declarant to any Lot or parcel of land within the Property by contract, deed

or other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone purposes and shall convey no interest in any pipes, lines, poles or conduits, or in any utility facility or appurtenances thereto constructed by or under Declarant or any easement owner, or their agents, through, among or upon the premises affected thereby, or any part thereof, to serve said land or any other portion of the Property, and where not affected the right to maintain, repair, sell or lease such appurtenances to any municipality, or other governmental agency or to any public service corporation or to any party, and such right is hereby expressly reserved.

## **SECTION 2.7. PERMITS, SOIL ANALYSIS TESTS, AND SEPTIC SYSTEMS -**

Whenever a Residential Dwelling is constructed or placed on a Lot, each Owner is responsible for obtaining all necessary building and/or any other permits required by Montgomery County. A Residential Dwelling shall not, be allowed to be constructed or placed on any Lot without all the necessary permits as required by Montgomery County. Whenever a Residential Dwelling is constructed or placed on any Lot it must be connected to the Central Water System and Montgomery County approved Septic Systems. At time of plating there is no central sewer system available in this area. Any individual water wells are prohibited. Central Water Systems will have an initial tap fees, deposit, and a monthly usage rates that is govern by the Texas water board will apply.

## **(ARTICLE III) USE RESTRICTIONS**

**SECTION 3.1. SINGLE FAMILY RESIDENTIAL USE** - Each Owner shall use their Lot and the Residential Dwelling on their Lot, for one single-family residential only. As used herein, the term "single family residential" shall be deemed to specifically prohibit, by way of illustration but without limitation, the use of any Lot for a duplex apartment, a garage apartment or any other apartment or for any multi-family use or for any business, educational, church, professional or other commercial activity of any type, except that an Owner may use his residence as a personal office for a profession or occupation, provided: (a) the public is not invited, permitted, or allowed to enter the Residential Dwelling or any structure or improvement upon such Lot and conduct business therein; (b) no signs advertising such profession or business are permitted; (c) no on-site employees are permitted; (d) no offensive activity or condition, noise and/or odor are permitted; and (e) such use in all respects complies with the laws of the State of Texas, and the laws, rules, and regulations of any regulatory body or governmental agency having authority and jurisdiction over such matters. The term "single family residential purposes" shall also be defined as: (a) one or more persons related by blood, marriage, common-law or legal, or adoption, which may include only parents, their children (including foster children and wards), their dependent brothers and sisters, their dependent parents, their dependent grandparents and domestic servants; and (b) no more than two unrelated persons living together as a single housekeeping unit and their children (including foster children and wards), their dependent brothers or sisters, their dependent parents, their dependent grandparents and their domestic servants.

**SECTION 3.2. USE OF RESERVES** - The Reserves are prohibited from any use that has not received the prior written approval of Declarant, violations will be considered trespassing, which approval must be filed of record in the Official Public Records of the Real Property Records of Montgomery County, Texas prior to commencing the approved usage. In the event anyone uses The Reserves, or the Detention Area without permission will be trespassing, and if injured in anyway they will not hold the Declarant responsible in any way.

**SECTION 3.3. CARE GIVING FACILITIES.** No lot shall be used for the operation of a boarding or rooming house, a residence for transients, a group, family, community, or half-way house, personal care facility, custodial care facility, day-care center, rehabilitation center, treatment facility, or residence of unrelated individuals who are engaging in, undertaking, or participating in any group living, day or night care of children or adults, rehabilitation, treatment, therapy, or training with respect to previous or continuing criminal activities or convictions, alleged criminal activities, alcohol, drug, or sexual dependency, physical or mental disabilities or illness, or other similar matters, unless any such facility is otherwise allowed by the terms of any law specifically negating the provisions of restrictive covenants prohibiting same. Provided, however, (i) informal baby-sitting arrangements for four (4) or less children on an occasional or non-scheduled basis; (ii) on-going or scheduled care of three (3) or less children, plus the occupant's own children; and (iii) baby-sitting or care-giving performed by residents of the Subdivision for those related to the resident by blood, marriage, or adoption are excepted herefrom and shall not be considered a violation of this section or Section 3. 1.

**SECTION 3.4. VEHICLES** - No motor vehicle or non-motorized vehicle, boat, trailer, marine craft, recreational vehicle, camper rig off of truck, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement or right-of-way unless such vehicle or object is completely concealed from public view inside a garage or other enclosure approved by the Architectural Control Committee or is placed behind the residence and is completely concealed from public view. Passenger automobiles, passenger vans, motorcycles, or pick-up trucks that: (i) are in operating condition; (ii) have current license plates and inspection stickers; (iii) are in daily use as motor vehicles on the streets and highways of the State of Texas; and (iv) which do not exceed six feet six inches (6' 6") in height, or eight feet (8') in width, or twenty-four feet (24') in length are excepted herefrom. No vehicle shall be parked so as to obstruct or block a public sidewalk. No vehicle shall be parked on the grass or lawn of a Lot. No vehicle may be repaired on a Lot in excess of forty-eight (48) hours during any consecutive seven (7) day period of time, unless the vehicle being repaired is concealed from view inside a garage or other approved enclosure or is placed behind the residence and is completely concealed from public view. Vehicles which transport inflammatory or explosive cargo are expressly prohibited. This restriction shall not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity. Owners or occupants of Lots may seek a temporary variance from this restriction for their guests, however, any such request for a variance must receive the prior approval of the Board of Directors of the Association.

**SECTION 3.5. LOT AND BUILDING MAINTENANCE** - The Owner and/or occupant(s) of all Lots shall at all times keep all trees, shrubs, weeds and grass thereon (and in the street easement adjacent to each Lot) cut in a sanitary, healthful and attractive manner and shall in no event use any Lot for storage of material and equipment except for normal residential requirements or incidental to construction of improvements thereon as herein permitted. The accumulation of garbage, trash or rubbish of any kind or the burning of any materials is prohibited. No Residential Dwelling or other building, structure, or improvement upon any Lot shall be permitted to fall into disrepair, and each such Residential Dwelling, building, structure, or improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner of the Lot at such Owner's sole cost and expense. In the event of default on the part of the Owner or occupant of any Lot in observing any or all of the above requirements, such default continuing after ten (10) days written notice thereof, the Association may, without liability to Owner or occupant, in trespass or otherwise, but without being under any duty to do so, enter upon said Lot and cut, or cause to be cut, shrubs, weeds and grass, and remove, or cause to be removed, or do anything necessary to secure compliance with this Section 3.5. and to place such Lot, Residential Dwelling, other building, structure, or improvement in a neat, attractive, healthful and/or sanitary condition, and shall charge the Owner or occupant of such Lot for the cost of such work. The Owner and/or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement within ten (10) days of receipt thereof. Any sums not paid shall become a part of the Lien.

**SECTION 3.6. NUISANCES** - No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Lot or Common Area, if any, in the vicinity thereof or to its occupants. No nuisance or annoyance of any type shall be permitted to exist or operate upon any Lot. The Board is specifically empowered to determine what activity constitutes a "nuisance or annoyance" in violation of this section.

**SECTION 3.7. TRASH CONTAINERS** - No garbage or trash shall be placed or kept within the Subdivision except in containers utilized by the trash collector employed to collect trash in the neighborhood or in secured trash containers or other covered containers. In no event shall any such containers be maintained on a Lot so as to be visible from any street or neighboring Lot except to make the same available for collection and then only the night before and day of such collection.

**SECTION 3.8. ANIMALS** - Animals, livestock, or poultry of any kind may be raised, bred, or kept on any Lot, to include a reasonable number of dogs, cats or other common household pets. Provided that they are not kept, bred or maintained for commercial purposes. The Board is specifically empowered to determine what constitutes a "reasonable" number of pets on a Lot. All animals, and household pets must be kept, confined to a fenced backyard (such fence shall encompass the entire backyard) or within the house. When away from Lot, pets must be kept on a leash at all times. It is the Owners' responsibility to keep the Lot and the Property clean and free of pet debris. Provided however, notwithstanding anything contained in this Section 3.8 to the contrary, any Lot consisting of one acre or more may maintain one horse or one cow per one acre. Provided, further, the Board of Directors may approve certain types of small pets to be maintained on a Lot on a temporary basis (e.g. poultry or rabbits), so long as i) the pets are used for educational or school related projects and, ii) the Board approves the pet(s) and the time frame the pet(s) will be located on the Lot in writing.

**SECTION 3.9. FIREARMS AND HUNTING** - The use or discharge of firearms, except as allowed by law to protect persons or property, is prohibited in the subdivision. The use or discharge of any other weapons used for hunting or to maim and kill, except as allowed by law to protect persons or property, is prohibited in the subdivision. Hunting of any kind for any type animal is prohibited in the subdivision.



**SECTION 3.10. SIGNS AND BILLBOARDS** - No signs, billboards, posters or advertising devices of any character shall be erected, permitted or maintained on any Lot except one (1) sign of not more than six (6) square feet, which sign is used to: (a) advertise the property for sale; (b) indicate security services; (c) identify the builder or contractor while original construction of a Residential Dwelling is in progress on such Lot; or (d) promote a political candidate, party or issue for a two (2) week period starting no earlier than two (2) weeks prior to the date of the election or referendum. Provided, however, the right is reserved by Declarant to construct and maintain such signs, billboards or advertising devices of such size as it deems necessary and is customary in connection with the financing and general sale of property in this Subdivision. In no event shall any sign billboard, poster or advertising device of any character, other than as specifically prescribed in the first sentence of this Section 3.10 be erected, permitted or maintained on any Lot without the express prior written consent of the Architectural Control Committee. The term "Declarant", as used in this Section 3.10 shall refer to the entities and such successor or assigns of such entities to whom the right under this Section 3.10 is expressly and specifically transferred. Declarant, the Association, or its assigns, shall have the right to remove any such sign, advertisement, billboard or structure which is placed on said Lots in violation hereof, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

**SECTION 3.11. OIL AND MINING OPERATIONS** - No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall any walls, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

**SECTION 3.12. SIGHT DISTANCE AT INTERSECTIONS** - No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6' 6") above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area forced by the street property lines and a line connecting them at points twenty five feet (25') from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

**SECTION 3.13. REBUILDING** - In the event of a fire or other casualty causing damage or destruction to a Lot or the Residential Dwelling located thereon, the Owner of such damaged or destroyed Lot or Residential Dwelling shall within one (2) month after such fire or casualty contract to repair or reconstruct the damaged portion of such Lot or Residential Dwelling and shall cause such Lot or Residential Dwelling to be fully repaired or reconstructed in accordance with the original plans therefor, or in accordance with new plans presented to and approved by the Architectural Control Committee, and shall promptly commence repairing or reconstructing such Residential Dwelling, to the end that the Residential Dwelling shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. Alternatively, such damaged or destroyed Residential Dwelling shall be razed or removed and the Lot restored as nearly as possible to its original condition within two (4) months of its damage or destruction.

**SECTION 3.14. ROOFS** - All roofs shall be approved by the Architectural Control Committee in writing and all Residential Dwellings and other buildings must have finished roof materials, such as composition shingles. No tarpaper or used metal materials are allowed to be used as roof materials.

**SECTION 3.15. DRIVEWAYS** - On each Lot, the Owner shall construct and maintain at there expense the driveway from the Residential Dwelling 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.

**SECTION 3.16. CULVERTS** - All Owners or occupants upon constructing a driveway must use reinforced culverts of at least eighteen inches or more in diameter and eighteen feet or more in width placed in the road ditch according to Montgomery County requirements. Property owners must check with Declarant and Montgomery County officials for proper size and correct depth setting in ditch before installation. If a culvert is set incorrectly by a Property owner and the culvert prohibits proper drainage of the road ditch, the Property owner, at their expense, shall be responsible for re-setting and/or re-installing the culvert to correct depth setting. If the Declarant, Home Owner's Association, Montgomery County or their contractors or assigns has to re-set a culvert to allow for proper drainage, the Property owner shall immediately reimburse such entity for all expenses incurred in re-setting and/or re-installing the culvert.

**SECTION 3.17. WALLS AND FENCES** - No wall, fence, planter or hedge shall be erected or maintained in a Utility Easement or in front of the building set back line with out the approval of the Architectural Control Committee. No fence, wall, or hedge shall be more than six and one-half (6 1/2) feet high and shall not be constructed in front of any residence, shall not conceal the view of any residence and shall not be constructed in front of the building setback line. Provided, however, with the written approval of the Architectural Control Committee, fences of open construction under two (2') feet in height may be constructed in front of the residence and in front of the building set back line. No side fence shall be located on any corner Lot nearer than the interior building line setback shown on the Plat. Fences that face a street must be of wood or metal construction and cannot be of solid construction. Barbwire fences are not allowed.

**(ARTICLE IV) SIZE, TYPE, COMPOSITION AND LOCATION OF RESIDENTIAL DWELLING**

**SECTION 4.1. RESIDENTIAL DWELLING SIZE AND CONSTRUCTION** - Residential Dwellings, exclusive of open porches and garages, constructed on a Lot shall not be less than 1,200 square feet, unless otherwise approved by the Architectural Control Committee. Only one residential dwelling per Lot is allowed. Mobile homes may be used as Residential Dwellings, provided i) All mobile homes placed on a lot must be built of new construction. **A mobile home built before 2000** will be considered on an individual basis and must be approved in advance in writing from the Architectural Control Committee; ii) be adequately anchored as prescribed by the Architectural Control Committee; and iii) have all visible sides skirted within thirty (180) days of being placed on a Lot. All buildings placed or constructed on a Lot must have finished exteriors such as brick, vinyl siding, or varnish paint approved by the Architectural Control Committee.

**SECTION 4.2. BUILDING LOCATION** - No building shall be located on any Lot closer to the front Lot line as the minimum building setback line shown on the Plat or any Utility Easement. A minimum distance of five (5) feet from any side Lot line unless 2 lots are purchased together and only one resident is placed on those 2 lots. For the purposes of this covenant, eaves, steps and un-roofed terraces shall not be considered as part of a building, provided; however, that this shall not be constructed to permit any portion of the construction on a Lot to encroach upon another Lot.

All mobile homes must be placed with the widest front side of the mobile home facing the main road and it must be placed parallel to the main road. If the mobile home is placed on a corner Lot, the widest front side of the mobile home must be placed parallel to either road and must adhere to the building setback lines.

**SECTION 4.3. TEMPORARY STRUCTURES** - No structures of a temporary character, tent, shack, barn or any other out-building structure or building, other than a permanent Residential Dwelling shall be placed on any Lot, either temporarily or permanently.

**SECTION 4.4. CONSOLIDATION OF LOTS** - Upon the written approval of the Architectural Control Committee, any Owner of one or more adjoining Lots (or portions thereof) may consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting site, in which case the setback lines shall be measured from the resulting side property lines rather than from the front Lot lines as indicated on the Plat and a variance shall be granted to encroach upon the building and lot lines, and such consolidated of Lots will be considered as one Lot for all purposes under this Declaration.

**(ARTICLE V) ARCHITECTURAL CONTROL COMMITTEE**

**SECTION 5.1. APPROVAL OF BUILDING PLANS** - No mobile home, building, improvement or structure shall be erected, placed or altered on any Lot until the construction plans and/or specifications showing the nature, kind, shape, height, color, materials and location of the proposed structure, have been approved in writing as to the harmony of exterior design and color with existing structures; location with respect to topography and finished ground elevation in relation to surrounding structures and topography; and as to compliance with any minimum construction standards adopted by the Architectural Control Committee. A copy of the construction plans and specifications and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Architectural Control Committee, or its designated representative prior to the commencement of construction. The Architectural Control Committee may require the submission of such plans, specifications, and plot plans, together with such other documents as it deems appropriate, in such form and detail as it may elect at its discretion. In the event the Architectural Control Committee fails to approve or disapprove such plans and specifications within forty-five (45) days after the same are submitted to it and received by it, approval will not be required and the requirements of this Section will be deemed to have been complied with. The members of the Architectural Control Committee are Tom A. Martin, Mark W. Martin, and Jeffrey D. Lochore. A majority of the members of the Architectural Control Committee may remove another member of the Architectural Control Committee at anytime with cause, and appoint their successors. A majority of the Architectural Control Committee may make decisions, which will be binding on the Architectural Control Committee.

**SECTION 5.2. POWERS OF THE ARCHITECTURAL CONTROL COMMITTEE** - By way of illustration, but not limitation, the Architectural Control Committee shall have the right to specify architectural and aesthetic requirements for all Residential Dwellings, improvements and other structures, including minimum setback lines, the location, height, and extent of fences, walls or other screening devices, the orientation of structures with respect to streets, walks, paths, and structures on adjacent property and a limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of improvements. The Architectural Control Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions imposed in this Declaration or that do not meet its architectural guidelines or that might not be compatible with the overall character and aesthetics of the Subdivision. The Architectural Control Committee may authorize variances from compliance with any of its guidelines and procedures or from these restrictions relating to buildings, structures and improvements when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted; however, when unique circumstances dictate. All variance grants shall be in writing, addressed to the Owner requesting the variance, describing the applicable restrictions to

which the variance is granted, listing conditions imposed on the granted variance and listing specific reasons for granting of the variance. No variance so granted shall stop the Architectural Control Committee from denying a variance in other circumstances. Failure by the Architectural Control Committee to respond within thirty (30) days to a request for a variance shall operate as a denial of the variance.

**SECTION 5.3. ARCHITECTURAL GUIDELINES** - The Architectural Control Committee may from time to time promulgate and amend architectural guidelines; provided, however, that such guidelines will serve only as general recommendations and the Architectural Control Committee shall not be bound thereby.

**SECTION 5.4. TERM** - The duties, rights, powers and authority of the Architectural Control Committee may be assigned at any time, at the sole election of a majority of the members of the Architectural Control Committee, to the Board of Directors of the Association by an instrument setting forth such assignment duly recorded in the Official Public Records of Real Property of Montgomery County, Texas. From and after the date of recording such assignment, and the acceptance thereof by the Board of Directors, the Board of Directors of the Association shall have full right, authority and power, and shall be obligated to perform the functions of the Architectural Control Committee, as provided herein. The duties, rights, powers and authority of the Architectural Control Committee shall, if not previously assigned to the Board of Directors automatically transfer to and be assumed by the Board of Directors of the Association once one hundred percent (100%) of all Lots under the jurisdiction of the Association have been conveyed by Declarant to other Owners.

**SECTION 5.5. NO LIABILITY** - Declarant, the Association and the Architectural Control Committee, as well as their members, agents, employees and architects, shall not be liable to any other party for any loss, claim or demand asserted on account of their administration of these restrictions and the performance of their duties hereunder, or any failure or defect in such administration and performance. No approval of plans and specifications and no publication of architectural guidelines shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in properly designed improvements. The acceptance of a deed or contract for deed to a Lot in the Subdivision shall be deemed a covenant and agreement on the part of the grantee, and the grantee's heirs, successors and assigns, that Declarant, the Association and the Architectural Control Committee, as well as their agents, employees and architects, shall have no liability under this Declaration except for willful misdeeds.

## **(ARTICLE VI) MANAGEMENT AND OPERATION OF THE PROPERTY**

**SECTION 6.1. MANAGEMENT BY ASSOCIATION** - The affairs of the Property shall be administered by the Association. The Association shall have the right, power and obligation to provide for the management, acquisition, construction, maintenance, repair, replacement, administration, and operation of the Property as herein provided for and as provided for in the Articles of Incorporation and Bylaws. The business and affairs of the Association shall be managed by its Board of Directors, unless otherwise reserved to the members by law, the terms of the Declaration, Articles of Incorporation, or the Bylaws.

The Association, acting through the Board, shall be entitled to enter into such contracts and agreements concerning the Property as the Board deems reasonably necessary or appropriate to maintain and operate the Property in accordance with the Declaration, including without limitation, the right to grant utility and other easements for uses the Board shall deem appropriate and the right to enter into agreements with adjoining or nearby land owners or governmental entities on matters of maintenance, trash pick-up, repair, administration, security, traffic, operation of recreational facilities, or other matters of mutual interest.

**SECTION 6.2. MEMBER'S EASEMENT OF ENJOYMENT** - Every member of the Association shall have a right and easement of enjoyment to the Common Areas, if any, which right shall be appurtenant to the title to the Member's Lot, provided, however, the Association shall have the right to: i) charge reasonable admission and other fees for use of the recreational facilities, if any, situated upon the Common Area, and ii) suspend any Members' use rights during any period of time any Assessment against the Members' Lot remains unpaid for up to sixty (60) days for any infraction of its published rules and regulations. Provided further, the Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the Common Area and recreational facilities to the members of his family, his tenants, or contract purchasers who reside on the Lot.

**SECTION 6.3. MEMBERSHIP IN ASSOCIATION** - Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become and shall remain a member of the Association until ownership of the Lot ceases for any reason, at which time the membership in the Association shall also automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of each Lot and may not be separated from such ownership.

#### **SECTION 6.4. VOTING OF MEMBERS** - The Association shall have two classes of membership.

Class A. The Class A Members shall be all fee simple owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, but only one vote per Lot is permitted. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or (b) January 1, 2030.

The Association retains the right to suspend voting rights of any Member during any period of time an Assessment levied against a Member's Lot is delinquent.

**SECTION 6.5. BOARD ACTIONS IN GOOD FAITH** - Any action, inaction or omission by the Board made or taken in good faith shall not subject the Board or any individual member of the Board to any liability to the Association, its members or any other party.

**SECTION 6.6. ANNEXATION** - Additional land may be annexed into the jurisdiction of the Association by Declarant without the consent of the Members.

### **(ARTICLE VII) COVENANTS FOR MAINTENANCE ASSESSMENTS**

**SECTION 7.1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS** - The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual Assessments;
- (b) Special Assessments; and
- (c) Reimbursement Assessments.

The Annual, Special, and Reimbursement Assessments, together with interest, costs, other charges provided for herein, and reasonable attorney's fees, shall also be a charge on the land and shall be a continuing lien upon the property against which such assessment is made (the "Lien"). Each such assessment, together with interest, costs, other charges provided for herein, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**SECTION 7.2. PURPOSE OF ASSESSMENTS** - Each Lot in the Subdivision is hereby subjected to an Annual Assessment for the purpose of creating a fund to be designated and known as the "maintenance fund", which Annual Assessment will be paid by the Owner or Owners of each Lot within the Subdivision to the Association, on or before February 1<sup>st</sup>, of each year, in advance annual installments, commencing on a date and in a manner to be promulgated by the Board of Directors of the Association. The rate at which each Lot will be assessed will be determined annually and may be adjusted from year to year by the Association, as hereinafter provided as the needs for the Subdivision may, in the judgment of the Association, require. Such assessment will be uniform, except as hereinafter provided, for Declarant and any builder to whom Declarant sells a Lot. The Association shall use the proceeds of said maintenance fund for the use and benefit of all residents of the Subdivision, as well as any other subdivision brought within the jurisdiction of the Association; provided, however, that other subdivisions to be entitled to the benefit of this maintenance fund must be impressed with and subjected to the Annual Assessment on a uniform, per Lot basis, equivalent to the Annual Assessment imposed hereby. The uses and benefits to be provided by the Association shall include, by way of clarification and not limitation, at its sole option, any and all of the following: maintaining detention pond(s) required on dedicated plats including but not limited to cleaning, dredging, filtering and all general maintenance requirements to ensure proper retention and drainage as required by Montgomery County, whichever is stricter, maintaining ditches and easements that detention pond(s) discharge into to ensure proper drainage of detention ponds including but not limited to dredging, grading and digging out ditches to ensure proper drainage as required by Montgomery County. The constructing and maintaining, of landscape in the reserves, easements, cul-de-sac and street medians, any future recreational facilities, or other public areas, payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions and conditions affecting the Property to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment, employing patrol services, lifeguards, instructors, and operators, caring for vacant Lots, garbage collection, and doing other things necessary or desirable, in the opinion of the Association, to keep the Properties in the subdivision neat and in good order or which is considered of general benefit to the Owners or occupants of the Property. It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith. Nothing herein shall constitute a representation that any of the above will, in fact, be provided by the Association. Each person who accepts a



Association. Each person who accepts a deed to a Lot or Lots agrees, by the acceptance of same, to pay such maintenance charge and assessments as herein provided.

IT IS UNDERSTOOD EACH RESIDENT OF THE SUBDIVISION, THEIR GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY; IT IS UNDERSTOOD AND AGREED THAT IT SHALL NOT BE ONE OF THE PURPOSES OF THE ASSOCIATION TO PROVIDE SECURITY TO THE RESIDENTS OF THE PROPERTY OR THEIR GUESTS AND INVITEES. NEITHER THE DECLARANT, THE ASSOCIATION, ITS BOARD, NOR ITS OFFICERS OR DIRECTORS SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR ALLEGED FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY.

**SECTION 7.3. MAXIMUM ANNUAL ASSESSMENT** - Commencing with the 2009 Annual Assessment, the maximum Annual Assessment shall be \$90.00 per Lot per year.

- (a) From and after 2009, the Annual Assessment may be increased each year not more than ten percent (10%) above the maximum Annual Assessment for the previous year without a vote of the membership.
- (b) From and after 2009, the maximum Annual Assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the actual Annual Assessment at an amount not to exceed the maximum Annual Assessment permitted herein.

**SECTION 7.4. SPECIAL ASSESSMENTS** - In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any use or benefit provided for herein in Section 7.2. Provided, however, any such Special Assessment shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

**SECTION 7.5. GOVERNMENTAL ASSESSMENT POWERS** – In the event that the The Association fails to comply with the purpose of assessments as described in Section 7.2 the local governing body shall have the right, but not the obligation, to exercise such maintenance and assessment power and to secure the assessed costs with a lien against the subdivision lots.

**SECTION 7.6. RATE OF ASSESSMENT** - Both Annual and Special Assessments must be fixed at a uniform rate; provided, however, Lots owned by Declarant, which are not held by contract purchasers shall not be subject to Annual or Special Assessments. Lots owned by Declarant, which are held by contract purchasers through a contract for deed, shall be subject to Annual and Special Assessments.

**SECTION 7.7. DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENTS** - The Annual Assessments provided for herein shall commence as to all Lots on the first day of the month following the placement or commencement of construction of a Residential Dwelling on a Lot. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

**SECTION 7.8. REIMBURSEMENT ASSESSMENTS** - A charge against a particular Owner and its Lot for the purpose of reimbursing the Association for expenditures and other costs of the Association incurred in curing any violation, directly attributable to the Owner or his tenants, guests, or invitees, for any violation of this Declaration, the Articles of Incorporation, Bylaws, Architectural Guidelines, or any Rules and Regulations.

**SECTION 7.9 EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION** - Any Assessment not paid within (30) Thirty days after the due date shall bear a late fee of \$14.00 from the due date for the year assessment. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability or the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**SECTION 7.10. SUBORDINATION OF THE LIEN TO MORTGAGES** - The Lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, however, shall extinguish the Lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the Lien thereof.

**SECTION 7.11. REIMBURSEMENT OF DECLARANT** - Recognizing that some of the cost of administration and maintenance of the Association may have to be subsidized by Declarant, the Directors (whether the Directors are same as the Declarant, his agents, servants, or employees and without being liable for any claim made by any Member of the Association that the Directors' duty to the other Members of the Association has been breached due to a conflict of interest) may execute promissory notes and/or other instruments evidencing any debt the Association owes the Declarant for monies expended by the Declarant or loaned to the Association by Declarant for and on behalf of the Association.

**(ARTICLE VIII) INSURANCE**

**SECTION 8.1. GENERAL PROVISIONS** - The Board shall have the authority to determine whether or not to obtain insurance for the Association and upon the Common Areas, if any, and if insurance is obtained, the amounts thereof. In the event that insurance is obtained, the premiums for such insurance shall be an expense of the Association which shall be paid out of the Maintenance Fund.

**(ARTICLE IX) AMENDMENT AND DURATION OF DECLARATION**

**SECTION 9.1. AMENDMENT** - The terms of this Declaration may be amended at any time by an instrument signed by those Owners owning at least two-thirds (2/3rds) of the Lots within the Subdivision. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the Official Public Records of Real Property of Montgomery County, Texas.

**SECTION 9.2. DURATION** - This Declaration shall remain in full force and effect until January 30, 2030, and shall be extended automatically for successive ten (10) year periods; provided however, that this Declaration may be amended at any time, as set forth in Section 9.1.

**(ARTICLE X) MISCELLANEOUS**

**SECTION 10.1. SEVERABILITY** - In the event of the invalidity or partial invalidity or partial unenforceability of any provision in this Declaration, the remainder of the Declaration shall remain in full force and effect.

**SECTION 10.2. NUMBER AND GENDER** - Pronouns, whenever used herein, and of whatever gender, shall include natural persons and corporations, entities and associations of every kind and character, and the singular shall include the plural, and vice versa, whenever and as often as may be appropriate.

**SECTION 10.3. ARTICLES AND SECTIONS** - Article and section headings in this Declaration are for convenience of reference and shall not affect the construction or interpretation of this Declaration. Unless the context otherwise requires, references herein to articles and sections are to articles and sections of this Declaration.

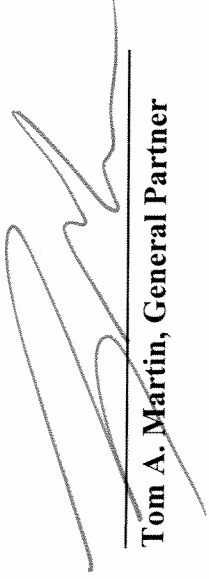
**SECTION 10.4. DELAY IN ENFORCEMENT** - No delay in enforcing the provisions of this Declaration with respect to any breach or violation thereof shall impair, damage or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time.

**SECTION 10.5. ENFORCEABILITY** - This Declaration shall run with the Subdivision and shall be binding upon and inure to the benefit of and be enforceable by Association and each Owner of a Lot in the Subdivision, or any portion thereof, and their respective heirs, legal representatives, successors and assigns. In the event any action to enforce this Declaration is initiated against an Owner or occupant of a Lot by the Association, the Association or other Owner, as the case may be, shall be entitled to recover reasonable attorney's fees from the Owner or occupant of a Lot who violated this Declaration.

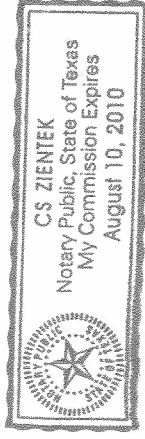
**SECTION 10.6. REMEDIES** - In the event any one or more persons, firms, corporations or other entities shall violate or attempt to violate any of the provisions of the Declaration, the Association, each Owner or occupant of a Lot within the Subdivision, or any portion thereof, may institute and prosecute any proceeding at law or in equity to abate, preempt or enjoin any such violation or attempted violation or to recover monetary damages caused by such violation or attempted violation.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed the foregoing instrument on this 1, day of June 2008.

**M.J.M. Investments, a Texas General Partnership**

  
**Tom A. Martin, General Partner**

Before me, on this day personally appeared Tom A. Martin, known to me to be the person whose name is subscribed to this instrument and, was executed on this the 1, day of June 2008.



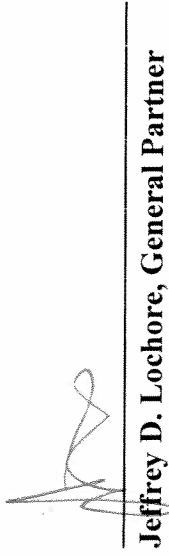
C.S. Zientek  
**Notary in and for the State of Texas**

  
**Mark W. Martin, General Partner**

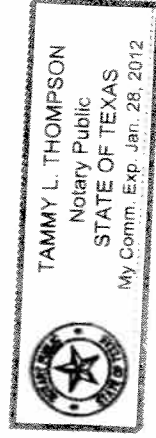
Before me, on this day personally appeared Mark W. Martin, known to me to be the person whose name is subscribed to this instrument and, was executed on this the 1, day of June 2008.



C.S. Zientek  
**Notary in and for the State of Texas**

  
**Jeffrey D. Lochore, General Partner**

Before me, on this day personally appeared Jeffrey D. Lochore, President of BARATO CAPITAL, Inc. A Texas Corporation and DBA M.J.M. Investments, known to me to be the person whose name is subscribed to this instrument and, was executed on this the 1, day of June 2008.



Tammy L. Thompson  
**Notary in and for the State of Texas**

After recording return to:

M.J.M. Investments  
P.O. Box 1762  
Porter, Texas 77365

FILED FOR RECORD

09 FEB 12 PM 1:50

Mark Jumball  
COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS  
COUNTY OF MONTGOMERY  
I hereby certify this instrument was filed in  
File Number Sequence on the date and at the time  
stamped herein by me and was duly RECORDED in  
the Official Public Records of Real Property at  
Montgomery County, Texas.

FEB 12 2009



Mark Jumball  
County Clerk  
Montgomery County, Texas