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WOODBEND IN MEMORIAL

DECLARATION OF COVENANTS AND RESTRICTIONS

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DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR WOODBEND IN MEMORIAL

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

THAT UNITED SAVINGS ASSOCIATION OF TEXAS FSB, of Houston, Harris County, Texas ("Developer"), being the owner of the land described on the plat referred to in Section 1.23 below (the "Land"), establishes and adopts the covenants, restrictions, reservations and conditions set forth below (collectively called the "Declaration") as a uniform plan for the use, development, improvement and sale of the Land or any portion thereof. Every contract, deed or other instrument hereafter executed covering the Land or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to this Declaration, regardless of whether or not this Declaration is set out in full or incorporated by reference in said contract, deed or other instrument.

ARTICLE I.

DEFINITIONS

The terms used in this Declaration shall have the following meanings:

Section 1.1. Architectural Committee. "Architectural Committee" shall mean the Committee provided for in Article III of this Declaration.

Section 1.2. Assessment. "Assessment" shall mean a Common Assessment, a Special Assessment or a Reimbursement Assessment, as hereinafter defined.

Section 1.3. Association. "Association" shall mean the Woodbend In Memorial Homeowners Association, Inc., a Texas non-profit corporation now existing or to be created after the date hereof, the Members of which shall be the Owners of the Lots.

Section 1.4. Board. "Board" shall mean the Board of Directors of the Association.

Section 1.5. Bylaws. "Bylaws" shall mean the Bylaws of the Association.

Section 1.6. Common Areas. "Common Areas" shall mean all of Woodbend In Memorial except Lots One (1) through Twenty-Two (22), but shall include an easement for the nature/exercise trail described on Exhibit "A", attached hereto and incorporated herein by reference for all purposes.

**Section 1.7. Common Assessments.** "Common Assessments" shall mean the Assessments made for the purpose of covering the portion of the annual costs of operating the Common Areas, including expenses incurred in connection with any authorized function of the Association which should be paid by each Owner to the Association for the purposes provided herein and charged to such Owner and to the Lots of such Owner.

**Section 1.8. Declaration.** "Declaration" shall mean this instrument as it may be amended from time to time.

**Section 1.9. Developer.** "Developer" shall mean and refer to United Savings Association of Texas FSB, its successors and assigns (i) if such successors and assigns should acquire more than four (4) undeveloped Lots from the Developer for the purpose of development and (ii) if such successors or assigns are designated in writing by Developer as a successor or assign of certain of the rights of Developer set forth herein and such successors or assigns accept such designation in writing; and, any Mortgagees of Developer and any purchaser at a foreclosure sale by any Mortgagee of Developer.

**Section 1.10. Election Date.** "Election Date" shall have the meaning set forth in Section 6.4 hereof.

**Section 1.11. Exterior Portion.** "Exterior Portion" shall mean (i) the exterior portion of a residence constructed on a Lot, including without limitation, roofs, fencing and building surfaces and materials, and (ii) the portion of such Lot not covered by a single family residence and which portion is visible at ground level from any Common Areas or at ground level from any other Home or Residence.

**Section 1.12. Improvements.** "Improvements" shall mean all structures and any appurtenances thereto of every type or kind, including but not limited to buildings, outbuildings, swimming pools, recreational facilities, utilities (including utility lines), patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, sprinkler pipes, garages, carports, driveways, fences, screening, walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees (and trees to be removed) and shrubs, poles, signs, exterior tanks, solar energy equipment, exterior air conditioning and water softener equipment, exterior lighting, recreational equipment or facilities, radio or television antenna and microwave television antenna, the demolition or destruction by voluntary action of any building or structure on the Lots, the grading, excavation, filling or similar disturbance of the surface of any Lot, including without limitation change in grade.

**Section 1.13. Land.** "Land" shall mean that certain tract or parcel of land containing 6.642 acres out of the W. G. Perkinson Survey, A-623, Houston, Harris County, Texas, such tract or parcel of land being the tract of land described on the Plat referred to in Section 1.23 below.

Section 1.14. Lot. "Lot" shall mean each of the lots created by the Plat.

Section 1.15. Maintenance Fund. "Maintenance Fund" shall mean any accumulation of the Assessments collected by the Association pursuant to Article VIII hereof.

Section 1.16. Member. "Member" shall mean a member of the Association, as more particularly described in Article III hereof.

Section 1.17. Mortgage. "Mortgage" shall mean a mortgage, deed of trust or other instrument executed by an Owner, duly recorded in the Official Public Records of Real Property of Harris County, Texas, and creating a lien or security interest encumbering a Lot, Home or Residence and securing the repayment of a loan.

Section 1.18. Mortgagee. "Mortgagee" shall mean the person who holds a Mortgage as security for repayment of a loan.

Section 1.19. Notice of Completion. "Notice of Completion" shall mean written notice to the Architectural Committee of the completion of any Improvement pursuant to Article III of this Declaration.

Section 1.20. Owner. "Owner" shall mean any record Owner, whether one or more persons or entities, of fee simple title to any Lot which is part of Woodbend, but excluding those having such interests merely as security for the performance of any obligation or the buyer of a Lot under executory contracts of sale.

Section 1.21. Home or Residence. "Home or Residence" shall mean a single family residence constructed or to be constructed on a Lot; provided, however, if a residence unit has not been constructed on a Lot, the term "Residence" shall mean such Lot.

Section 1.22. Person. "Person" shall mean a natural person, a corporation, a partnership or any other entity.

Section 1.23. Plat. "Plat" shall mean the Plat of Woodbend, such plat being recorded in Volume 321, Page 64 of the Map Records of Harris County, Texas.

Section 1.24. Woodbend. "Woodbend" shall mean the Land, together with all improvements now or hereafter situated thereon and all rights and appurtenances thereto.

Section 1.25. Reimbursement Assessment. "Reimbursement Assessment" shall mean (i) a charge against a particular Owner and his Lot for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation, directly attributable to the Owner, of this Declaration or the Rules and Regulations pursuant to Article VI hereof for maintenance, repairs and replacements to the Common Areas; or (ii) a charge, fee or penalty against an Owner or his Lot for failure to



complete Improvements or otherwise comply with time limits set by this Declaration or the Association.

Section 1.26. Replacement Reserve Fund. "Replacement Reserve Fund" shall mean the reserve fund established pursuant to Article IV hereof for maintenance, repairs and replacements to the Common Areas.

Section 1.27. Rules and Regulations. "Rules and Regulations" shall mean the rules adopted from time to time by the Association concerning the management and administration of Woodbend for the use and enjoyment of the Owners.

Section 1.28. Special Assessment. "Special Assessment" shall mean a charge against each Owner and such Owner's Lot representing a portion of the costs to the Association for the purposes described in Section 8.3 hereof.

ARTICLE II.

USE RESTRICTIONS

Section 2.1. Residential Purposes. Each Lot shall be used by a single family only for residential purposes, and each Home or Residence constructed on a Lot shall be deemed to be used for residential purposes when it is used to house persons of a single family and their belongings, without regard to whether the persons are owners of the Home or Lot or occupy the Home or Residence pursuant to a rental, leasing, purchase or other arrangement. Except for the leasing or rental of any Residence or Home on a Lot, no Home or Residence shall be used for any commercial, business or professional purposes, nor for public religious purposes. The use of a Home or Residence for the maintenance of a personal or professional library, for the keeping of personal records, personal business records or professional records or personal accounts, or for the handling of personal business or professional telephone calls or correspondence shall not be deemed to be in violation of this provision; but consultation with clients or customers at a Home or Residence is prohibited.

Section 2.2. Nuisance or Offensive Activities Prohibited. No noxious, dangerous or offensive activities of any sort shall be permitted, nor shall anything be done in any Home or Residence or in any Common Areas which shall be or may become an annoyance or nuisance to the other Owners, nor shall any loud or disturbing noises be emitted from any Home or Residence in such a manner as to be an annoyance or to be objectionable to another Owner.

Section 2.3. Portable Facilities and Temporary Structures. In no event may a particular construction project locate temporary storage facilities or portable toilets on any Lot beyond the shorter of the following periods: (i) six (6) months after construction is commenced; or (ii) after essential completion of Improvements has occurred (being when the Exterior Portion of the Home under construction is completed or the garage facility is

available for use as a storage area). All temporary structures must be removed within ten (10) days after the right of use terminates. The Association may prescribe appropriate fees or penalties for completion delays. Such fees shall be subject to a Reimbursement Assessment.

Section 2.4. Insurance Premiums Not Affected by Owner's Use. Nothing shall be done in or kept in or on any Lot, Home or Residence or Common Areas which could or may increase the rate of insurance or result in uninsurability for Woodbend or any Home or Residence, or cause the cancellation, suspension, modification or reduction of such insurance. If, by reason of the occupancy or use of any Home or Residence by any Owner, the rate of insurance on all or any portion of the remainder shall be increased, such Owner shall be personally liable to the Association for such increase. Such damages shall be payable to the Association as a Reimbursement Assessment for the benefit of any owners and the Association, as their respective interests may appear.

Section 2.5. No Mineral Exploration. No drilling, digging, quarrying or mining operation of any sort shall be permitted on the Lots.

Section 2.6. Compliance with Laws. Each owner shall promptly and fully comply with any and all applicable laws, rules, ordinances, statutes, regulations or requirements of any governmental agency or authority with respect to the occupancy and use of his Home or Residence and with the provisions hereof, and the Bylaws and Rules and Regulations promulgated hereunder.

Section 2.7. Temporary Structures. No structure of a temporary character, trailer, shed, tent, shack, garage, barn, out building or pre-constructed storage facility shall be permitted on any Lot at any time; provided, however, this provision is subject to Section 2.3 hereof.

Section 2.8. Animals and Pets. No animals, domestic or wild, snakes, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats, birds or other common household pets, provided they are not kept, bred or maintained for any commercial purposes. All permitted household pets shall be kept on their owner's Lot or within their owner's Residence at all times, except when being taken from the premises provided such pets are leashed or are held at all times when off of their owner's Lot. If the Owners of eleven (11) of the Lots, or more, determine, at a meeting duly called for such purpose, that any such pet or pet(s) are a nuisance and that such pet(s) should be removed from the Land, the owner of such pet(s) shall have not more than fifteen (15) days to remove such pet(s) from the Land. If such pet(s) is not removed from the Land within such fifteen day period, the Board shall take such steps as are necessary to provide for the removal of such pet(s) from the Land with all legal fees and other costs of such removal being charged and a liability of such Owner, which shall be reimbursable to the Association as a Reimbursement Assessment.

Section 2.9. Antennas. Without the written authorization of the Association, no exterior television or radio antennas, satellite dishes or other receiver facilities shall be placed, allowed or maintained on any Lot or any portion of the Exterior Portion of a Home or Residence, nor upon any Common Areas.

Section 2.10. New Construction. All Homes or Residences constructed on the Lots shall be of new construction and conform to all matters covered by and provided for in this Declaration. Improvements must be completed within eight (8) months after construction is commenced. The Association may set appropriate fees or penalties for failure to complete Improvements within a designated period of time.

Section 2.11. No Outdoor Drying of Clothes. Outdoor drying of clothes shall not be permitted on the Lots or within the Common Areas.

Section 2.12. Trash Removal. All rubbish, trash or garbage on any Home or Residence (or Improvements under construction) until removed by the Association or its contracted disposal company shall be kept in an appropriate receptacle in an area screened or protected by a fence so that it cannot be seen from the street or another Lot, and shall be regularly removed from Homes or Residences and shall not be allowed to accumulate thereon.

Section 2.13. Storage of Vehicles. No portion of a driveway or any Common Areas (specifically including the streets) shall, without the express written permission of the Association, be used for the storage of boats, trailers, motorcycles, campers, recreational vehicles, and other recreational equipment that is motorized, unused or inoperable automobiles, or any other motorized units such as buses, construction equipment, or tractors, or any other items which the Association determines to be unsightly or inappropriate. However, such machinery as is consistent with the use of a Lot as a Residence may be kept on such Lot provided they are kept or stored within a garage or such other places as may be completely out of view from any other Home or Residence, or the Common Area.

Section 2.14. Lot Maintenance. The Owner or occupants of all Lots shall at all times keep such Lot or Lots in a sanitary, healthful and attractive condition 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 by this Declaration. The burning of any garbage, trash or rubbish is prohibited. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements or any of them, such default continuing after ten (10) days written notice thereof, the Association or its assigns may, without being under any duty to so do, in trespass or otherwise, enter upon said Lot and remove or cause to be removed such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration and to place said Lot in a neat, attractive, healthful and sanitary

condition, and may charge the Owner or occupant of such Lot for the cost of such work, which charge shall be considered a Reimbursement Assessment. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such Reimbursement Assessment immediately upon receipt of a statement therefor.

Section 2.15. Association Exemption. The foregoing covenants and restrictions of this Article II shall not apply to the activities of the Association or its appointed representatives and agents, it being recognized that such covenants and restrictions shall not prohibit the reasonable use by the Association (or its appointed representative and agents) of all Common Areas in any manner necessary with respect to the Association's duties.

Section 2.16. Common Areas. The Common Areas shall be used only for street and recreational purposes, and for purposes reasonably connected therewith or related thereto. No residential, professional, religious, business or commercial use shall be made of the Common Areas or any portion thereof; provided, however, the Association may prescribe rules and regulations for the use of the Common Areas.

### ARTICLE III.

#### ARCHITECTURAL COMMITTEE AND APPROVAL OF CONSTRUCTION

Section 3.1. Approval of Improvements. Improvements of any kind that will be visible at ground level or from any other Home, Residence or Common Area shall not be erected, placed or constructed, nor shall any change be made in placement, design or construction of the Exterior Portion of any Home or Residence or other Improvement after original construction, on any portion of the Land until the final plans for such Improvements have been submitted to and approved in writing by the Architectural Committee (construction plans and specifications for Improvements are referred to herein as the "Plans").

Section 3.2. Membership of Committee. The Architectural Committee shall initially consist of three (3) members, all of whom shall be appointed by Developer. Developer shall have the continuing right to appoint three (3) members until the Election Date. Members of the Architectural Committee may, but shall not necessarily be, Members of the Association. Members of the Architectural Committee appointed by Developer may be removed and replaced at any time by Developer and shall serve until resignation or removal by Developer. After the Election Date, members of the Architectural Committee shall be appointed by the Board and such members may be removed and replaced at any time by the Board and shall serve until their resignation or removal by the Board. The Association may, at any time and from time to time, change the authorized number of members of the Architectural Committee, but the number of members shall always be an odd number and shall not be less than three (3).

Section 3.3. Address of Committee. The address of the Architectural Committee shall be at the principal office of the Association or such address as the Association may designate.

Section 3.4. Submission of Plans. Prior to commencement of construction of any improvements or revision thereof (including, without limitation, any modification, alteration or replacement of Improvements in existence on a Lot or on such Lot prior to casualty damage, but excluding any repair, replacement or improvement conforming, in all material respects, with previously approved Plans or Improvements), the Owner proposing such Improvements shall submit to the Architectural Committee at its designated office, as the case may be, two copies of such Plans for Improvements (including descriptions, surveys, plot plans, drainage plans, elevation drawings, landscape plans (which shall identify any substantial trees that will be removed), construction plans, specifications and samples of materials and colors and such other details as the Architectural Committee shall reasonably request) showing the nature, kind, shape, height, width, color, materials and location of the proposed Improvements. The Owner shall be entitled to receive a receipt for the same from the Architectural Committee or its authorized agent. The Architectural Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvements. Until receipt by the Architectural Committee of all required materials in connection with the proposed Improvements, the Architectural Committee may postpone review of any materials submitted for approval.

Section 3.5. Criteria For Approval. The Architectural Committee shall approve any proposed Improvements only if it deems in its reasonable discretion that the Improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of Woodbend as a whole; that the appearance of the proposed Improvements will be in harmony with the surrounding areas of Woodbend including, without limitation, quality of materials, colors and location with respect to topography and finished grade elevation; that the Improvements will comply in the sole judgment of the Architectural Committee with the provisions of this Declaration, including, without limitation, set-back requirements, landscaping, fences, height and minimum square footage, and any applicable Plat, restriction, ordinance, governmental rule or regulation; and that the Improvements will not detract from the beauty, wholesomeness and attractiveness of Woodbend or the enjoyment thereof by Owners. The Architectural Committee may condition its approval of any proposed Improvements upon the making of such changes therein as the Architectural Committee may deem appropriate and may set the time frame within which such Improvements must be finished to avoid fees or penalties for delayed completion; provided the time limit for completion of any new Home or Residence on a Lot shall never be set at less than six (6) months from and after the commencement of construction.

Section 3.6. Committee Guidelines or Rules. The Architectural Committee may from time to time issue guidelines or

rules relating to the factors which will be taken into consideration in connection with the approval of any proposed improvements under Section 3.5, above.

Section 3.7. Architectural Review Fee. The Architectural Committee may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed improvements. The Architectural Committee may provide that the amount of such fee shall be uniform for similar types of any proposed improvements or that the fee shall be determined in any other reasonable manner, such as based upon the reasonable cost of the proposed improvements.

Section 3.8. Decision of Committee. The decision of the Architectural Committee shall be made within thirty (30) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. The decision shall be in writing and, if the decision is not to approve proposed improvements, the reasons therefor shall be stated. The decision of the Architectural Committee shall be promptly transmitted to the Owner at the address furnished by the Owner to the Architectural Committee.

Section 3.9. Failure of Committee to Act on Plans. Any request for approval of proposed improvements shall be deemed approved, unless written disapproval is transmitted to the Owner by the Architectural Committee within thirty (30) days after the date of receipt by the Architectural Committee of all required materials (which date shall be evidenced by the Architectural Committee's issuing a receipt to the Owner confirming that all required materials have been received by the Architectural Committee).

Section 3.10. Appeal from the Decision of the Architectural Committee. If the Architectural Committee denies or refuses approval of proposed Plans and Improvements for a Home or Residence or any other Improvements of a Lot, the decision of the Architectural Committee shall be final and binding on all persons; provided, however, any party seeking approval from the Architectural Committee may sue the Committee for injunctive relief if the Committee's disapproval is patently arbitrary and capricious. Such party's right to sue for injunctive relief shall be the sole and exclusive remedy of such party against the Architectural Committee and its members, and in no event shall the Architectural Committee or any member thereof be liable to such party or any other party for damages.

Section 3.11. Prosecution of Work after Approval. Approved Improvements shall be completed as promptly and diligently as possible and in strict conformity with the Plans and Improvements submitted to the Architectural Committee. Failure to complete the proposed Improvements within one (1) year after the date of approval, subject to delays for causes beyond the reasonable control of the Owner or his builder or contractor (provided that the Owner takes reasonable steps to minimize the effects of any circumstances causing such delay ["force majeure delays"], or to

complete the Improvements in strict conformity with the Plans approved by the Architectural Committee, shall operate automatically to revoke the Architectural Committee's approval of such Improvements.

Section 3.12. Notice of Completion. Promptly upon completion of the Improvements, the Owner shall give written notice of completion ("Notice of Completion") to the Architectural Committee and, for all purposes hereunder, the date of receipt of such Notice of Completion by the Architectural Committee shall be deemed to be the date of completion of such Improvements, provided that the Improvements are, in fact, completed as of the date of receipt of the Notice of Completion.

Section 3.13. Inspection of Work. The Architectural Committee or its duly authorized representative shall have the right to inspect any Improvements prior to or after completion, provided that the right of inspection shall terminate sixty (60) days after the Architectural Committee shall have received a Notice of Completion from the Owner.

Section 3.14. Notice of Noncompliance. If, as a result of inspections or otherwise, the Architectural Committee finds that any Improvements have been done without obtaining the approval of the Architectural Committee, or without being in conformity to Improvements approved by such Committee, or were not completed within one (1) year after the date of approval by the Architectural Committee (subject to force majeure delays), the Architectural Committee shall notify the Owner in writing of the noncompliance which notice (the "Notice of Noncompliance") shall be given, in any event, within sixty (60) days after the Architectural Committee receives a Notice of Completion from the Owner or determines any Improvements were constructed without obtaining proper approval. The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance.

Section 3.15. Failure of Committee to Act after Completion. If, for any reason other than the Owner's act or neglect, the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) days after determining the noncompliance or after receipt by the Architectural Committee of written Notice of Completion from the Owner, the Improvements shall be deemed in compliance if the Improvements were, in fact, completed as of the date of Notice of Completion.

Section 3.16. Appeal to Board of Finding of Noncompliance. If the Architectural Committee gives any Notice of Noncompliance, the Owner may appeal to an Arbitration Committee, to be composed of one (1) member selected by the Architectural Committee, one (1) member selected by the Owner and a third (3rd) arbitration committeemen selected by the two arbitration committeemen so designated. The Arbitration Committee shall review the matter of noncompliance with reasonable promptness after reasonable notice of a hearing or meeting in connection with the same to the Owner and

the Architectural Committee and shall decide, with reasonable promptness, whether there exists any such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. The decision of the Arbitration Committee shall be final and binding on all parties.

Section 3.17. Correction of Noncompliance. If the Architectural Committee determines that a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than sixty (60) days from the date of receipt by the Owner of the Notice. If the Owner has appealed to an Arbitration Committee under the preceding Section, the Owner shall remedy or remove any noncompliance determined by such Committee within sixty (60) days after the decision of the Arbitration Committee has been rendered. If the Owner does not comply with the Architectural Committee or the Arbitration Committee, as the case may be, the Board may, at its option, record a Notice of Noncompliance against the real property upon which the noncompliance exists, may remove or cause to be removed the noncomplying improvement to any Home, Residence or Lot, or may otherwise remedy the noncompliance; and the Owner shall reimburse the Association upon demand for all expenses incurred therewith, including reasonable attorney's fees and interest at the maximum rate permitted by law on such expenses from the date the Association demands payment of such expenses until paid. ~~If such expenses are not promptly repaid by the Owner to the Association, the Board may levy a Reimbursement Assessment against the Owner of the Lot for such costs and expenses and interest accrued thereon.~~ The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies with the Association may have at law or in equity under this Declaration.

Section 3.18. No Implied Waiver or Estoppel. No action or failure to act by the Architectural Committee or by the Board shall constitute a waiver or estoppel with respect to future action by the Architectural Committee or the Board with respect to any other Improvements. Specifically, the approval by the Architectural Committee of any Improvements shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvements to any other Lot or Lots or any other similar Improvements or proposal submitted with respect to any other Improvements by such Owner, the Owners or otherwise.

Section 3.19. Committee Power to Grant Variances. The Architectural Committee may authorize variances from compliance with any of the provisions of this Declaration or any amendments thereto, including restrictions upon height, set-back lines, size, floor areas or placement of structures or driveways or similar restrictions, which circumstances such as topography, natural obstructions, tree preservation guidelines, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Committee. The instruments evidencing such variances may be recorded, but recordation is not necessary for such variances to become



effective. If any such variance is granted, no violation of the provisions of this Declaration or any amendments thereto shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including but not limited to zoning ordinances, restrictions, easements, set-back lines (except as herein provided) or other requirements imposed by any governmental authority having jurisdiction.

Section 3.20. Compensation of Members. The Members of the Architectural Committee shall be entitled to such compensation for services rendered and reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder as may, from time to time, be authorized or approved by the Board, including professional fees to architects or similar professionals as the committee may in its sole discretion hire or retain. All such sums payable as compensation and/or reimbursements shall be payable out of the Maintenance Fund.

Section 3.21. Meeting of Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder; and may, by resolution in writing adopted by a majority of the members, designate a "Committee Representative" (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Architectural Committee, except the granting of approval to any Improvements and granting of variances. The action of such Committee Representative or the written consent of the vote of a majority of the members of the Architectural Committee shall constitute action of the Architectural Committee.

Section 3.22. Records of Action. The Architectural Committee shall report in writing to the Board all final action of the Architectural Committee and the Board shall keep a permanent record of such reported action.

Section 3.23. Estoppel Certificate. The Board shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Architectural Committee, furnish a certificate with respect to the approval or disapproval of any Improvements or with respect to whether any Improvements were made in compliance herewith. Any Owner, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

Section 3.24. Nonliability for Committee Action. No member of the Architectural Committee, any Committee Representative, the Association, any member of the Board or the Developer shall be liable for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural

Committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any Improvements be deemed approval of or considered an indication of the safety or soundness, whether structural or otherwise, of any Improvements, their construction quality, or their conformance with building codes or other governmental laws or regulations.

The Association shall indemnify each member of the Architectural Committee against all loss, costs and expenses, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as a member of the Architectural Committee in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such committee member may be entitled. All liability, loss, damage, costs and expenses incurred or suffered by the Association by reason of or arising out of or in connection with the foregoing indemnification provision shall be treated and handled by the Association; provided, however, that nothing in this section shall be deemed to obligate the Association to indemnify any Owner, who is or has been a member of the Architectural Committee, with respect to any duties or obligations assumed or liabilities incurred by him as an Owner (and not as a member of the Architectural Committee).

Section 3.25. Exception During Construction. During the course of actual construction of any permitted structure or Improvements, and provided construction is proceeding with due diligence, the Architectural Committee shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place only to the extent necessary to permit such construction; provided that, during the course of any such construction, nothing is done which will result in a violation of any of the provisions of this Declaration upon completion of construction and nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within Woodbend.

Section 3.26. Construction on More than One lot. The construction of a Residence on more than one Lot or one Lot and a portion of another shall be permissible if approved by the Architectural Committee pursuant to Section 3.8 hereof.

#### ARTICLE IV.

##### CONSTRUCTION RELATED RESTRICTIONS

Section 4.1. Height and Character of a Home or Residence. No Home or Residence shall be erected, altered or permitted to remain

on any Lot or Lots other than one detached single-family residential dwelling, not to exceed four stories in height, with a private garage or other covered parking facility capable of being fully enclosed.

**Section 4.2. Minimum Square Footage.** The living area of the main residential structure, exclusive of (i) porches (whether opened or screened), (ii) a garage or other car parking facilities, (iii) terraces, (iv) driveways and (v) servant's quarters, shall not be less than 2,800 square feet. Measurements shall be to the face of the outside walls of the living area.

**Section 4.3. Set-back Lines.** All Lots shall have the building set-back lines and easements set forth on the Plat of Woodbend and no Improvements may be located between the street and such set-back line other than one driveway, an entrance walkway and landscaping as approved by the Architectural Committee.

**Section 4.4. Entrance and Security Walls.** Reference is here made to the existing wall along the west lines of Lots 1, 2, 3, 4, 5, 6, and 22; and to the security fencing and gates at the entrance area of Woodbend (herein the "Exterior Walls"). No Owner of a Lot abutting any such fencing may remove, modify or attach anything to or connect to the Exterior Walls without the prior written permission of the Architectural Committee or the Association. The Association shall be obligated to maintain and repair the Exterior Walls at all times in a neat and orderly condition and a good state of repair. Notwithstanding any other provisions hereof, the Developer and the Association shall have and hereby reserve an easement five (5') feet on each side of the base of such Exterior Walls to the extent, if any, that the Developer or Association determines to be necessary; and the Developer and Association hereby reserves reasonable rights of access over and across Lots 1, 2, 3, 4, 5, 6, and 22 and the Common Areas in Woodbend in order to have reasonable access to such Exterior Walls.

**Section 4.5. Fences and Walls.** No fence or wall may be built on any Lot without the prior written approval of the Architectural Committee. The Architectural Committee shall not approve (i) a wooden fence of any type to be located along the front property lines or building set-back line of any Lot or (ii) any fence adjacent to the Exterior Walls if the height of the Owner's proposed fence exceeds the height of the Exterior Walls.

**Section 4.6. Drainage.** No Owner of a Lot shall be permitted to construct Improvements on such Lot or grade such Lot or permit such Lot to remain in or be placed in such condition that rain water falling on such Lot drains to any other Lot; and, in pursuance of the preceding requirement, underground drains and gutters on roofs or other means approved by the Architectural Committee or Board, as may be applicable, shall be required in order that all such rain water shall drain into an underground drainage system at such Lot (or other means approved by the Architectural Committee or Board, as may be applicable).

Section 4.7. No Obstruction of Sight Lines. No fence, wall, tree, hedge or planting shall be maintained on any Lot in such manner as to obstruct sight lines for vehicular traffic.

ARTICLE V.

EASEMENTS AND TITLE TO UTILITY LINES

Section 5.1. Owners' Easement for Common Areas. A non-exclusive easement is hereby granted each Owner in and to the Common Area for such Owner's use and enjoyment of the Common Area, such easement being subject to this Declaration and the Rules and Regulations adopted from time to time by the Association.

Section 5.2. Easements. There is hereby created an easement, on over and across the easement areas delineated on the Plat of Woodbend (except for the Sanitary Sewer and Storm Sewer Easement described in instrument recorded in the Official Public Records of Real Property under Clerk's File No. G681994 and Film Code No. 166-99-0107, which Developer plans to get abandoned by the City of Houston) for ingress and egress, for installation, replacing, repairing and maintaining utilities, including but not limited to water, sewer, telephone, electricity, gas and cable television, provided that all such utilities shall be underground. ~~Provided, however, no such utilities may be relocated without the prior approval of the Association.~~

Section 5.3. Developer's Right to Grant Easements. Developer, prior to the Election Date, shall have and hereby reserves the right to grant or create temporary or permanent easements, for access, utilities, drainage, water and other purposes incident to Developer's development, sale, operation and maintenance of the Lots and the Common Areas, which easements may be located on, under, over and across (i) the Lots and (ii) the Common Areas.

Section 5.4. Utility Easements on Plat. The utility easements shown on the Plat are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operating in Harris County, Texas, as well as for the benefit of the Association and the Owners of Woodbend to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone lines, gas, water, sanitary sewers, storm sewers and any other utility or service which the Developer or Association may find necessary or proper.

Section 5.5. Title of Utility Lines. The title conveyed to any Land in Woodbend shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewer or sanitary sewer lines, poles, pipes, conduits or other appurtenances or facilities constructed by the Developer or its predecessors in title or the Association or public utility companies upon, under, along, across, or through such public utility easements; and the right (but no obligation) to construct, maintain, repair and operate such system, utilities, appurtenances and facilities is

reserved to the Developer or Association, its successors and assigns.

Section 5.6. No Liability to Owners. Neither the Developer or Association, nor their successors or assigns, shall be liable to the Owners for any damage done by any utility company or any of their agents or employees to shrubbery, trees, flowers or other property of the Owner situated on the Land covered by said utility easements.

## ARTICLE VI.

### MANAGEMENT

Section 6.1. Management by Association. The Association shall have the power and obligation to administer and provide for the maintenance, repair, replacement, upkeep, landscaping of Common Areas, maintenance of the streets, curbs and gutters in Woodbend, the Exterior Walls, lighting and related electrical service, providing insurance, and such other services and maintenance as the Association deems reasonably necessary or appropriate to maintain and operate Woodbend as a residential community of the highest character; and, without limiting the foregoing, the Association shall have the right to grant utility and other easements with respect to Woodbend or portions thereof for uses the Board shall deem appropriate and the right to enter into agreements with adjoining or nearby landowners or associations or entities representing such landowners on matters of maintenance, trash pick-up, repair, administration, security, traffic, operation of recreational facilities or other matters of mutual interest. The rights, powers and duties of the Association set out herein shall be exercised by the Board or its designees.

Section 6.2. Membership in the Association. Every Person who is the record owner of a Lot in Woodbend shall be a member of the Association and entitled to one (1) vote for each Lot owned. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of any obligation. Ownership of a Lot shall be the sole qualification for membership.

Section 6.3. More than One Owner. When the full fee interest in any Lot is held by more than one Person, then such Persons shall designate one of their numbers as the Member in the Association, which designation shall be made in writing to the Board. After an Owner is so designated, the Board shall have the right to rely on such designation until a written notice revoking such appointment is received by the Board. Any such Owners may designate the Member from among themselves in any manner they deem fit, and in the event that such Owners are unable to agree upon one of their numbers to be designated as the Member to the Association, then none of such Owners shall have any vote, fractional or otherwise, in the

Association. In no event shall more than one (1) vote be cast with respect to any lot owned by Persons other than Developer.

Upon the transfer of ownership of a Lot, Home or Residence, however achieved, including without limitation by foreclosure of a lien thereon, the new Owner shall concurrently with such transfer become a Member in the Association.

Section 6.4. Initial Board of Directors: Election of First Board. The initial Board of Directors of the Association shall be designated by Developer. Such Board shall serve until the earlier of (i) a date selected by Developer or (ii) within fifteen (15) days after the Developer holds legal title to no more than three (3) Lots or less, herein called the "Election Date". Thereafter, elections shall be held as set forth in the By-Laws of the Association.

Section 6.5. Meetings of the Board of Directors. The Board of Directors shall meet as set forth in the Bylaws.

Section 6.6. Disputes. In addition to its other powers conferred by law or hereunder, the Board shall be empowered to create procedures for resolving disputes between Owners and the Board or the Association, including appointment of committees to consider and recommend resolutions of any such disputes.

Section 6.7. Accounting and Audit. The Board shall keep or cause to be kept books of detailed account of the receipts and expenditures affecting Woodbend and its administration and specifying the maintenance and repair expenses of the Common Areas and any other expenses incurred by or on behalf of the Association. Both the books of accounts and all vouchers supporting the entries made therein shall be available for examination at the office of the Association by all Owners at convenient hours on working days and the board shall cause to be established and announced for general knowledge the days and hours within which such books shall be available for inspection. All such books and records shall be kept in accordance with generally accepted accounting procedures, consistently applied, and shall be audited at least once a year by an outside auditor pursuant to the terms and provisions of the Bylaws. The fiscal year of the Association shall be the calendar year unless another period is established by an amendment of the Bylaws.

Section 6.8. Professional Management. The Board may retain such professional management as the Board deems appropriate to perform the day to day functions of the Association and to provide for the maintenance, repair, landscaping, insuring, administration and operation of Woodbend as provided for herein and as provided for in the Bylaws.

Section 6.9. Board Actions in Good Faith. Any action or inaction by the Board made or taken in good faith shall not subject the Board to any liability to the Association, its Members or any other party.

## ARTICLE VII.

PROPERTY RIGHTS IN COMMON AREAS

Although Developer may retain the legal title to areas designated as Common Areas or portions thereof until Developer conveys legal title to the last Lot in Woodbend, Developer may, at any time after the date hereof, convey legal title to all or a portion of such Common Areas to the Association. The Association shall be obligated to accept title to, operate and maintain the Common Areas conveyed to the Association. Developer hereby covenants that the Common Areas or portions thereof that it may convey to the Association shall be free and clear of all liens and encumbrances (other than the lien for property taxes and assessments not then due and payable), but such conveyance shall be subject to the terms of the Declaration, the Plat and all easements, covenants, conditions, restrictions and equitable servitudes or other encumbrances of record as of the date hereof or hereafter placed of record by the Association. The property or interest in property transferred to the Association by Developer shall not impose any unreasonable or special burden on the Association, other than the normal burdens of ownership of property, including the management, maintenance, replacement and operation thereof.

Every Member of the Association shall have a beneficial interest of use and enjoyment in and to the Common Areas and such interest shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to publish rules and regulations governing use of the Common Areas and the improvements and facilities located thereon, and to establish penalties for infractions thereof;

(b) The right of the Association, in accordance with the Bylaws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said property; provided, however, the rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder;

(c) The right of Owners or occupants of dwellings within Woodbend to use the Common Areas (together with all facilities now or hereafter located thereon);

(d) The right of the Association to adopt, implement, and maintain a private security system for Woodbend consistent with applicable law;

(e) The right of the Association to establish rules and regulations governing traffic on the streets and driveways within the Common Areas, and to establish sanctions for any violation or violations of such rules and regulations;

(f) The right of the Association to regulate noise within Woodbend, including without limitation the right of the Association to require mufflers on engines or to prohibit the use of devices producing excessive noise; and

(g) The right of the Association to control the visual attractiveness of Woodbend, including without limitation the right to require Owners to eliminate objects which are visible from the Common Areas and which, in the Association's judgment, detract from the visual attractiveness of Woodbend.

#### ARTICLE VIII.

##### COMMON ASSESSMENT AND MAINTENANCE FUND

Section 8.1. Payment of Common Assessments. Each Owner, including the Developer, shall contribute to the Maintenance Fund a portion of the annual Common Assessments assessed to cover the expenses and administration of Woodbend by the Association (including ad valorem taxes, if any), and the landscaping, maintenance, insurance, repair and operation of the Common Areas, which portion shall be fixed at a uniform rate for all Lots. The Common Assessments shall be assessed ~~in accordance with the provisions hereinafter set forth.~~ No Owner is or shall be exempt from such obligation to so contribute by waiver of use of the Common Areas or any portion thereof, or because of any restriction of such uses in accordance herewith or with the Rules and Regulations, or because no Improvements have been constructed on such Owner's Lot. Additionally, no abatement of the Common Assessments (or any other assessments) shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or Improvements to Common Areas or from any action taken to comply with any law or for any other reason.

Section 8.2. Budgets; Establishment of Common Assessment and Replacement Reserve Fund. Until the commencement of the first fiscal year after the recordation of this Declaration, the Developer shall have the right and obligation to establish the annual budgets (and Common Assessments) for each fiscal year projecting all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of Woodbend. Such budget and all successive budgets shall contain a reasonable allowance for contingencies and shall establish a reserve fund (the "Replacement Reserve Fund") for maintenance, repairs and replacements to Common Areas, including those that must be replaced on a periodic basis.

Commencing with the first full fiscal year after the Election Date, the Board shall establish an annual budget at least thirty (30) days in advance of each fiscal year and such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of Woodbend, including a reasonable allowance for contingencies and a reasonable



addition to the Replacement Reserve Fund. The Common Assessments for such fiscal year shall be established by the adoption of such annual budget by the Board. Copies of each such budget and notice of the Common Assessments shall be available upon request to each Owner on or before January 1 of the applicable year by such reasonable means as the Board may provide.

The failure or delay of the Board to prepare any annual budget or to deliver copies of such budgets to each Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay Common Assessments whenever the same shall be determined; and in the event of any delay or failure to establish any annual budget, each Owner shall continue to pay the Common Assessments monthly or otherwise as the Association may prescribe (as hereinafter provided), at the rate established for the previous fiscal year until a new fiscal budget is established (with the Common Assessments established by the new annual budget to be applied retroactively to the first of the current fiscal year and appropriate adjustments made in succeeding installments of Common Assessments for such fiscal year).

Section 8.3. Special Assessments. If the Board at any time or from time to time determines that the Common Assessments assessed for any period are insufficient to provide for the continued operation of Woodbend and the maintenance of the Common Areas or for other expenditures the Board is authorized to make under this Declaration, then the Board shall have the authority to levy such Special Assessments as it shall deem necessary to provide for such continued maintenance, operation and other expenditures.

Without limiting the generality of the foregoing, such Special Assessments may be assessed because of a casualty or other loss to any part of the Common Areas, improvement of the Common Areas, to make up for any deficiencies caused by nonpayment of Assessments by Owners, or to pay ad valorem taxes. The Board shall have the right, without the approval of the Owners, to levy a Special Assessment in the amount of up to ten percent (10%) of the Common Assessments for the current fiscal year of the Association. No Special Assessment in excess of ten percent (10%) of the Common assessments for current fiscal year of the Association shall be effective until the same is approved in writing by Members holding at least thirteen (13) votes of membership in the Association at any regular or special meeting of the Members. Any such Special Assessment shall be payable (and the payment thereof may be enforced) in the manner herein specified for the payment and enforcement of the Common Assessments.

Section 8.4. Exempt Property. All properties in Woodbend dedicated to and accepted by a local public authority or utility, if any, and Common Areas are subject to these Covenants and Restrictions but shall be exempt from the Assessments.

Section 8.5. Payment of Common Assessments; Enforcement. The Common Assessments assessed against each Lot shall be due and payable, in advance, in installments as the Board may prescribe

from time to time, monthly, quarterly or annually, for or during the year for which the Common Assessments in question have been assessed. Any such amount not paid and received by the tenth (10th) day following the due date shall be deemed delinquent and, without notice, shall accrue a late charge for additional collection costs to be set by the Board; provided, however, such charge shall be made only to the extent legally permissible. Such delinquent payment shall also, at the Board's option, bear interest at the maximum contract rate of interest permitted by law from the date originally due until paid. If any such amount shall remain unpaid on the last day of the month in which such payment is due, then, at the Board's election, the Common Assessments due from the delinquent Owner for the next period shall be accelerated, shall become at once due and payable, and from the last day of the month in which such payment is due shall bear interest at the maximum rate permitted by law. For purposes of the preceding sentence, if the actual Common Assessments for the next period is not then known, it shall be deemed that the Common Assessments for the next period shall be the Common Assessments for the period then applicable. If, after the Common Assessments for the next period have been accelerated by the Board, satisfactory payments of the Common Assessments and accrued interest are paid, then the Board may allow such charge to again be paid on the regular basis applicable to each Lot.

In order to secure the payment of the Assessments hereby levied, a vendor's lien for the benefit of the Association shall be and is hereby reserved in the Deed from the Developer to the Purchaser of each Lot (and assigned to the Association), which lien shall be a covenant running with the land binding on each subsequent Owner of such Lot, and shall be enforceable through appropriate judicial proceedings by the Association. As additional security for the payment of the Assessments hereby levied, each Owner of a Lot in Woodbend, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by non-judicial foreclosure pursuant to the provisions of the applicable sections of the Texas Property Code; and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to serve all required notices to the party or parties who own such Lot, and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Official Public Records of Real Property of Harris County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein, the Association shall mail to the defaulting Owner or Owners a copy of the Notice of Trustee's Sale no less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U. S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the

last known address of such Owner according to the records of the Association. In the event the statutes of the State of Texas should require any other notice, the Trustee shall conform notice to the then applicable statutes. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Maintenance Fund an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner or Owners. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any Assessment, the Association may, acting through the Board, upon ten (10) days prior written notice thereof to such non-paying Owner, suspend the voting rights of such non-paying Owner so long as such default exists.

In the event any Lot Owner is consistently in default, the Board may require such Lot Owner to deposit in advance an amount equal to the Common Assessment for such Lot for the two (2) preceding years; but at the end of twenty-four (24) months, any unused portion of such deposit as a required Common Assessment shall be returned to such Lot Owner.

**Section 8.6. Lien to Enforce Assessments.** In addition to the right of the Board to enforce an Assessment, the Board may file a claim or lien against the Lot of the delinquent Owner or Member by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description and street address of the Lot against which is claimed and the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and Common Assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board, to cover the preparation and recordation of such release of lien instrument.

**Section 8.7. Lawsuit to Enforce Assessment.** The collection of any Assessment and other sums due hereunder may, in addition to any other applicable remedy at law or equity, be enforced by suit for a money judgment; and in the event of such suit, the expense incurred in collecting such delinquent Assessments, including interest, costs and reasonable attorney's fees, shall be chargeable

to and be a personal debt and obligation of such defaulting Owner.

Section 8.8. Effect on Mortgagee: Lien Subordinate to Mortgage. No violation by an Owner of the provisions of this Declaration shall affect the lien of any Mortgage presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such Mortgage, holder of any such lien or beneficiary of such Mortgage; and any such Mortgage or lien may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions contained in this Declaration.

The liens described herein and reserved shall be deemed subordinate to a first lien, second lien or other liens of any bank, insurance company, pension and profit sharing trusts or plans, or other bona fide, third party lender which may have heretofore or may hereafter lend money in good faith for (i) the purchase or improvement of any Lot; (ii) any Owner's continuing ownership and maintenance of a Lot or Lots, and (iii) any renewal, extension, or rearrangement of a loan described in (i) and (ii) above. Each first, second or other Mortgagee of a Mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the Mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such holder acquires title to such Lot. No such sale or transfer shall relieve such holder acquiring title to a Lot from liability for any Assessment thereafter becoming due or from the lien thereof, nor shall the liability of any Owner personally obligated to pay any Assessment which became due prior to such sale or transfer be extinguished by such sale or transfer. Any other sale or transfer of a Lot shall not affect the Association's lien for Assessment.

Section 8.9. Maintenance Fund. The Common Assessments and Special Assessments collected shall be paid into the Maintenance Fund to be held and used by the Association for the benefit, directly or indirectly, of Woodband; and such Maintenance Fund may be expended by the Board for the purposes set forth herein, including without limitation providing for the enforcement of the provisions of this Declaration, the Bylaws and Rules and Regulations; for the maintenance, operation, repair, benefit and welfare of the Common Areas (including the streets), and generally for doing those things necessary or desirable in the opinion of the Board to maintain or improve Woodband. The use of the Maintenance Fund for any of these purposes, except as provided herein, is permissive and not mandatory, and the decision of the Board with respect thereto shall be final, so long as made in good faith. Under no circumstances shall the Assessments be used by Developer to pay for the cost of installing the streets or roadways within Woodband, storm sewers, sanitary sewers, electrical or water lines, necessary to service the Lots or any recreational or other amenities constructed in the Common Areas prior to the Election Date.

Section 8.10. Advance Payment of Common Assessments. Prior to or upon Developer's delivery of a deed to the first purchaser of each Lot, each such purchaser shall pay the Association an amount of money equal to two (2) quarterly payments of Common Assessments for the current fiscal year. On the Election Date, Developer shall pay to the Association an amount of money equal to two (2) quarterly payments of Common Assessments for the current fiscal year for the Lots owned by the Developer. In the event of a sale of a Lot, no refund shall be made of any Common Assessments; any adjustment to be made shall be prorated as may be agreed between the seller and purchaser of such Lot.

Section 8.11. Stoppage Certificate for Assessments. Any Mortgagee and any prospective purchaser of a Home or Residence shall be entitled upon written request therefor to a statement from the Board setting forth the amount of any unpaid Assessments not paid by the Owner of a Home or Residence in which such prospective purchaser or Mortgagee has an interest. Any prospective purchaser shall not be liable for nor shall the Home or Residence conveyed be subject to the lien provided for in this Declaration for any unpaid Assessments made by the Board against the particular Home or Residence involved in excess of the amount set forth in such statement. Any such purchaser shall however, be liable for any Assessments becoming due after the date of any such statement.

#### ARTICLE IX.

##### INSURANCE

Section 9.1. General Provisions. The Board shall obtain insurance (the premiums for which shall be paid from the Maintenance Fund) for Woodbend, if available, providing for comprehensive general liability insurance for the Association against claims for bodily injury or death and property damage suffered by the public or any Owner, the family, agent, employee or invitee of any Owner, occurring in or about Woodbend, or upon, in or about the private driveways, roadways, walkways and passageways on or part of Woodbend, which policy shall, to the extent reasonably obtainable, have limits in an amount deemed reasonable by the Association. Any such policy shall contain all such provisions and endorsements as are reasonably prudent to protect the interests of the Association and each Owner, regardless of the negligent acts of other Owners or the Association. In addition, the Board shall obtain such other insurance in such reasonable amounts as the Board shall deem desirable, including without limitation, directors' and officers' liability insurance for the directors and officers of the Association against any liability asserted against any such party or incurred by such party in such capacity or arising out of such party's status as a director or officer; and fidelity bonds for officers or Board members or for any management company retained by the Board.

Section 9.2. Policies. All insurance provided for in this Article shall be effected with responsible insurers authorized to

do business in the State of Texas. All such policies of insurance shall name as insured the Association, as trustee of the Owners and all Mortgagees, all as their respective interests may appear. All such policies shall be without contribution with regard to any other policies of insurance carried individually by an Owner and shall provide that such policy shall not be terminated for any cause without at least thirty (30) days prior written notice to the Association and the Mortgagees. Any proceeds paid in respect of any insurance policy obtained by the Board pursuant to Section 9.1 shall be held and disbursed by the Board in accordance with this Declaration.

ARTICLE X.

FIRE OR CASUALTY; REBUILDING

In the event of damage or destruction of any Improvements on any Lot, the Owner thereof shall promptly cause the damaged or destroyed Improvement to be (i) restored or replaced to its original condition or such other condition as may be approved in writing by the Architectural Committee or (ii) demolished and the Lot to be suitably cleaned and/or landscaped subject to the approval of the Architectural Committee so as to present a neat and attractive appearance.

ARTICLE XI.

UTILITY SERVICE

Gas, electrical and telephone service are available to all Lots in Woodbend. Future maintenance will be the responsibility of the particular utility or the Association.

ARTICLE XII.

AMENDMENT AND DURATION OF DECLARATION

Section 12.1. Amendment. Except as otherwise provided by law, the provisions hereof may be amended or modified by a written instrument executed and acknowledged by the Board of Directors of the Association recorded in the Official Public Records of Harris County, Texas; provided no such instrument shall be binding upon any mortgagee of (i) Developer or (ii) Lot Owner not a party.

Section 12.2. Duration. This Declaration shall remain in full force and effect until January 1, 2021, and shall be automatically extended for successive ten (10) year periods thereafter; provided, however, this Declaration may be terminated on January 1, 2021 or effective on the commencement date of any successive ten (10) year period by filing for record in the Office of the County Clerk of Harris County, Texas, within a period of twelve (12) months prior to such effective date of termination, of

a written instrument terminating this Declaration, executed and acknowledged by at least fifteen (15) of the Lot Owners:

ARTICLE XIII.

CORRECTION OF ERRORS

Developer reserves, and shall have the continuing right until the Election Date without the consent of other Owners (provided the consent of the Developer's Mortgagee is first obtained), to amend this Declaration or the Bylaws for the purpose of clarifying or resolving any ambiguities or conflicts herein or correcting any inadvertent misstatements, errors omissions herein, provided that no such amendment shall change the voting rights, proportionate share of Assessments, property description of any Owner and such Owner's Mortgagee who do not join in the execution of such correction instrument.

ARTICLE XIV.

MISCELLANEOUS

Section 14.1. Severability. In the event of the invalidity or partial invalidity or unenforceability of any provision or a portion of this Declaration, the remainder of this Declaration shall remain in full force and effect.

Section 14.2. Rules and Regulations. The Rules and Regulations with respect to the day-to-day maintenance, operation and enjoyment of Woodland shall be promulgated by and may be amended from time to time by the Association. The Rules and Regulations are of equal dignity with, and shall be enforceable in the same manner as, the provisions of this Declaration, but in the event of a conflict, this Declaration shall control. Each Owner, by accepting a conveyance of a Lot, agrees to comply with and abide by the Rules and Regulations, as the same may be amended from time to time.

Section 14.3. Mortgage Matters. Any Mortgagee, upon reasonable notice, shall be entitled to examine the books and records of the Association.

Section 14.4. Delay in Enforcement. No delay in enforcing the provisions of this Declaration as 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 of repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

Section 14.5. Limitation of Liability. Developer, as well as its agent, employees, officers, directors, partners and their respective officers, directors, agents and employees, shall not be liable to any Owner or lessee of the Land or any portion thereof or to any Mortgagor or other party for any loss, claim or demand in

connection with a breach of any provision of this Declaration by any party other than Developer.

Section 14.6. 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 this Declaration, Developer, the Association and each purchaser, grantee, owner or lessee of the Land, or any portion thereof, may institute and prosecute any proceeding at law or in equity (i) to abate, prevent or enjoin any such violation or attempted violation, or (ii) to recover monetary damages caused by such violation or attempted violation.

Section 14.7 Enforceability. The covenants and restrictions adopted and established for the Land by this Declaration are imposed upon and made applicable to the Land and shall run with the Land and shall be binding upon and inure to the benefit of and be enforceable by Developer, the Association, each purchaser, grantee, Owner and lessee of the Land or the Improvements situated on hereafter situated thereon, or any part of either, and the respective heirs, legal representatives, successors and assigns of the Developer, the Association and each such purchaser, grantee, Owner and lessee.

Section 14.8. Mergers and Consolidations. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger, consolidation or annexation shall have the consent of at least fifteen (15) of the Lot Owners.

Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, the properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association will be subject to the covenants and restrictions established by this Declaration within the Land, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration with respect to the Land, except as changed by amendment of this Declaration.

Section 14.9. Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof applicable to corporations or individuals, men and women, shall in all cases be assumed as though in each case fully expressed.



045-03-0764

IN WITNESS WHEREOF, Developer has executed this instrument  
this \_\_\_ day of August, 1991.

UNITED SAVINGS ASSOCIATION OF TEXAS FSB

BY: [Signature]  
NAME: MAX R. EVERSON  
TITLE: S.V.P.

ATTEST:

BY: [Signature]  
NAME: JOHN C. TENNANT  
TITLE: CRDING COORDINATOR

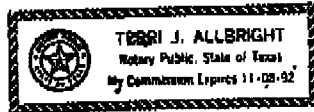
STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 27th  
day of August, 1991, by Max R. Everson  
Max R. Everson of United Savings Association of Texas FSB, on  
behalf of said Association.

My Commission Expires: 11 8 92

[Signature]  
Notary Public in and for  
the State of Texas

Stamped or Printed Name of Notary:



045-03-0765

EXHIBIT "A" TO  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
WOODBEND IN MEMORIAL

DESCRIPTION OF NATURE/EXERCISE TRAIL-WOOBEND IN MEMORIAL

A five foot (5') easement over and across the north five feet (5') of Lot 14 of Woodbend and running along the entire northerly boundary line of said Lot 14.

any instrument which purports to be duly recorded in the public records of this state, in violation of the provisions hereof, is hereby declared null and void, and the same shall be treated as such.

THE STATE OF TEXAS  
COUNTY OF HARRIS

I hereby certify that this instrument was FILED at File Number [redacted] on the date and at the time stated herein by me, and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

SEP 3 1991



*Ante R. Williams*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

**HOLD** FOR  
TITLE AGENCY OF TEXAS, INC.

479121 1998 TH/ls