

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS OF SUNNY BAY ESTATES
AND LOTS 6 AND 7 OF THE PRISCILLA SMITH SUBDIVISION**

This Declaration of Covenants, Conditions, and Restrictions is made on _____, 2004, by SUNNY BAY ESTATES LIMITED PARTNERSHIP, a Texas limited partnership, whose mailing address is 914 Riviera Drive, Mansfield, TX 76063.

RECITALS

The undersigned (herein referred to as "Declarant," whether one or more) is the owner of all that certain real property ("the Property" or "the subdivision") located in Henderson County, Texas, described as follows:

"All that certain lot, tract or parcel of land located in Henderson County, Texas described as the Sunny Bay Estates in plat recorded in Cabinet E, Slide 227, and Lots 6 and 7 of the Priscilla Smith Subdivision as shown in Plat recorded in Volume 7, Page 59 and Cabinet C, Slide 122, both in the Plat Records of Henderson County, Texas."

The Declarant has devised a general plan for the entire Property as a whole, with specific provisions for particular parts and parcels of the Property. This general plan provides a common scheme of development designed to protect and safeguard the Property over a long period.

This general plan will benefit the Property in general, the parcels and lots that constitute the Property, the Declarant, and each successive owner of an interest in the Property. Each successive owner of an interest in any Lot is herein referred to in this instrument as "Owner." If there are multiple Owners for any one Lot and a dispute shall arise as to any provision in these restrictions, then the Owner who is first named in the conveyance(s) or other instruments transferring title as to that Lot that are filed of record shall be the controlling interest as to that Lot.

Therefore, in accordance with both the doctrines of restrictive covenants and implied equitable servitudes, the Declarant desires to restrict the Property according to these covenants, conditions, and restrictions in furtherance of this general development plan.

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

1. All numbered Lots on the recorded plat of the subdivision shall be used exclusively for single-family residential purposes. The term "single-family" as used herein shall refer not only to the architectural design of the Dwelling but also to the permitted number of inhabitants, which shall be limited to a single family, as defined below. No multi-family dwellings may be constructed on any Lot; however a detached guest house or secondary living quarter may be constructed if approved by the Declarant or the Architectural Control Committee. No building, outbuilding or portion thereof shall be constructed for income

property, such that tenants would occupy less than the entire Lot.

No Lot shall be occupied by more than a single family, except for temporary guests visiting the family for a period not greater than 14 days. For purposes of these restrictions, a single family shall be defined as any number of persons related within the second degree of consanguinity or affinity, living with not more than one (1) person who is not so related, as a single household unit. It is not the intent of these restrictions to exclude from a Lot any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration, is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by applicable law. No Lot, and no building erected or maintained on any Lot, shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes.

No Lot shall be further sub-divided except that fractions of Lots may be separated to add space to adjacent whole Lots if the combination of whole and fractional Lots is used as a single building site and all other provisions of these restrictions are complied with.

2. No residential building shall be erected on any said Lots which shall have less than 2000 square feet of floor space within the heated area if located on the waterfront, or less than 1500 square feet of floor space within the heated area if located on any other Lot or Lots (however, this requirement shall not apply to a detached guest house or secondary living quarter that is built attendant to a primary residential building that complies with the requirement). Prior to commencement of any construction, plans (including plot plans showing drainage plans) must be approved by the Declarant or the Architectural Control Committee. All materials used for exterior construction shall be new unless otherwise approved.

All painted improvements and other painted structures on each Lot shall be repainted by the Owner thereof at the Owner's sole cost and expense as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Lot or structure thereon. The approval of the Declarant or the Architectural Control Committee otherwise required for improvements under this paragraph or paragraph 14, shall not be required for such repainting so long as neither the color scheme nor the arrangement of the colors of any improvements, nor the color of any paint thereon is altered.

Any air conditioning unit installed on a Lot shall be located or screened so as not to be visible from any street within the Property. No above-ground swimming pools shall be permitted.

Construction of improvements on each Lot must comply with the current building code published by the Congress of American Building Officials and all applicable local building codes that are enforced by governmental agencies. Owner is responsible for applying for and obtaining all applicable governmental permits and other approvals, including payment of all fees for those permits and other approvals. Owner shall take all reasonable precautions to minimize interference with traffic and to protect the general public and residents of the Subdivision, from injury from movement of vehicular traffic in connection with construction of each Lot. In addition, to, and without limiting the generality of the foregoing, Owner agrees to the following:

- A. **Storage of Building Materials.** Building materials stored on a Lot will be kept in a neat condition so as not to detract from the appearance of the neighborhood and so as to give the visual impression from adjacent streets of a clean, orderly work site.
- B. **Scrap Materials and Trash.** Owner agrees that scrap materials and trash produced in connection with the construction of a house on a Lot shall be confined to a particular area of such Lot, preferably to the side, or behind, the house. Trash will be placed in a wire mesh, or solid container, within such area at the end of each work day and removed from the Lot frequently enough so that trash does not overflow from such container.
- C. **Clean Roads and Utilities.** Owner agrees to protect pavements, curbs, gutters, swells or drainage course, sidewalks, streets, utility structures including, without limitation, fire hydrants, manhole covers, valve boxes, and second stage inlets and other property contiguous, in the vicinity of, or leading to each Lot from damage, and shall keep pedestrian and road rights-of-way and drives, and other property, clean and clear of equipment, building materials, dirt, debris and similar materials. Owner further agrees to maintain in good functional condition, storm water pollution prevention materials adequate to comply with guidelines promulgated by the Environmental Protection Agency.
- D. **Maintenance.** Owner agrees to keep the interior and exterior of all improvements constructed on a Lot in good working condition and repair. Without limiting the generality of the foregoing, Owner agrees to promptly replace any glass, paint, roof materials, bricks, stone or other exterior building materials on any houses which are damaged or unduly worn.
3. No building or structure shall be located on any Lot closer to the street upon which the Lot fronts than the building line shown on the plat approved by the Declarant or the Architectural Control Committee, as the case may be, nor shall the dwelling structure extend closer than 15 feet to the back property line except there is no restriction on waterfront Lots as to distance from the 355 ft. MSL line. No structure shall be erected closer than 5 feet to side property lines and structures on corner Lots must maintain 12 feet from side property line.
4. No structure of a temporary character, trailer, cellar, tent, shack, garage or other outbuilding, motor home, mobile home, manufactured home, house trailer or camper shall be used as a residence either temporarily or permanently. However, this restriction shall not prohibit the use of a motor home, house trailer, camper or a tent for the lodging of temporary guests visiting the family for a period not greater than 14 days.
- No motor home, mobile home, manufactured home, house trailer, camper, boat, trailer, or similar wheeled vehicle shall be parked or located on any Lot for more than 14 consecutive days or more than 24 days in any calendar year unless it is stored behind the front building line and is permanently enclosed or screened so as to not be visible from the street or adjacent properties. Such enclosure or screening method must be approved in writing by the Declarant or by the Architectural Control Committee, as the case may be.
- A garage must be constructed and maintained to accommodate at least two (2) full-sized automobiles for each Lot with a Dwelling Unit. Each driveway must be able to

accommodate two vehicles in front of the garage for off-street parking requirements. Rear dDetached garages are permitted if approved by the Declarant or the Architectural Control Committee. No garage shall be permanently enclosed for conversion to any other use. Open carports are not permitted, unless special design circumstances warrant their use, in which case permission must be obtained in writing from the Declarant or the Architectural Control Committee. Owner shall provide and install at Owner's expense all driveway approaches in conformance with all applicable regulatory requirements. Owner shall maintain at Owner's expense the driveway to the street occasioned by connecting the driveway thereto.

The exterior of all dwellings and/or improvements shall be completed (including exterior painting) within 9 months from the commencement of construction. No pre-erected, used, or modular houses may be moved onto any Lot or Lots. All buildings other than boat houses shall be completely underpinned with no piers or pilings exposed to view.

No signs of any type shall be allowed on any Lot except (1) one sign of not more than six square feet advertising the Lot for sale or rent, (2) a sign owned by the Declarant or owned by the Sunny Bay Estates Property Owners Association, or (3) political sign(s) with a combined total of not more than six square feet advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and shall be removed within ten (10) days after such election.

Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other water craft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Declarant or the Board of Directors. Stored vehicles and vehicles which are either obviously inoperable or do not have current licenses shall not be permitted on any Lot except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on a Lot must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the approval of the Declarant or the Board of Directors. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property during the daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Dwelling Unit or the Common Areas. Any vehicle parked in violation of this section or parking rules promulgated by the Board of Directors may be towed. No vehicle of any size which is used for the transportation of inflammatory or explosive cargo may be stored in the subdivision at any time.

5. No outhouses (except state approved, regularly serviced sanitation devices for use during the period of construction or for special occasions not to exceed three (3) days) will be permitted on any part of the property at any time. All lavatories, toilets, and bath facilities shall be installed indoors and shall be connected to adequate aerobic systems designed and constructed to comply with specifications of the state and local health authorities, and no outside or surface toilets shall be permitted.

The Owner shall construct, furnish or install all on-site utility extensions, including

without limitation, water and electric extensions, from the point of connection adjacent to the perimeter of the Lot to any portion of the Lot. Owner further agrees to pay any utility deposit or charge, including any connection tap or inspection fee, for water, sewer, electrical, gas, telephone, cable television, or utility service for the Lot or any part thereof any costs or charges for meters for utility service.

6. No oil drilling, oil development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.
7. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for the purpose of breeding or selling same, whether for profit or not. Exchange of such animals for anything of value to the seller shall constitute a sale of the merchandise and therefore prohibited under this provision.

No dog shall be allowed to run free in the subdivision but must, at all times, either be (1) restrained on the Owner's Lot either by a fence or by a chain or other restraint that is adequate to confine the dog on the Lot, or (2) if taken off of the Owner's Lot, be restrained at all time on a leash controlled by an individual who has sufficient strength and ability to restrain the dog.
8. All Lots will be kept free of trash, garbage and debris at all times. During the growing season the Lot shall be kept free of weeds and underbrush for reasons of sanitation and fire prevention. If, in the opinion of the Board of Directors of Sunny Bay Estates Property Owners Association, an unsanitary or hazardous condition exists, the Sunny Bay Estates Property Owners Association reserves the right to clean up and/or mow the Lots and charge the Owner(s) a reasonable fee for this service. Failure to pay the charges for the clean up and/or mowing where the Sunny Bay Estates Property Owners Association has done so shall give the association, or its agent, the right to place a lien against the Lot for this service.
9. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the subdivision in which said Lot is located.
10. These restrictions, covenants and conditions may be enforced by the Declarant (or any member of Declarant), by the Sunny Bay Estates Property Owners Association or by the Owner of any Lot or Lots in said subdivision, either by proceedings for injunction or to recover damages for breach thereof or both.
11. These restrictions, covenants, and conditions are to run with the land and shall be binding in perpetuity on all Owners within the subdivision and all persons claiming under them. These restrictions, covenants and conditions may be amended in whole or in part at any time by an instrument signed by the Owners of a majority of the Lots in the subdivision and

recorded in the real property records of Henderson County, Texas.

12. No (1) inoperable or unregistered vehicle or boat, (2) farm machinery, or (3) motorized equipment, shall be parked for more than 30 days on the driveway or any portion of any Lot in such a manner as to be visible from the street or any adjoining property.
13. Lot(s) located outside of the Property but which are adjacent to the subdivision may and shall become a member of the subdivision if an instrument signed by (1) all owners of the Lot(s) applying for membership and (2) the Owners of a majority of the Lots currently subject to these restrictions, is recorded in the real property records of Henderson County, Texas, and all requisite governmental approvals, if any, have been obtained. At such time, any such Lots become subject to these restrictions, as now existing or hereinafter amended, the same as if the Lot(s) had originally been described as part of the Property.

14. **Easements**

- A. Full rights of ingress and egress shall be had by the Declarant and the Association at all times over and upon each Lot and the Property for carrying out the rights, functions, duties, and obligations hereunder; provided, that any such entry shall be made with as minimum inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the easement user.
- B. Declarant hereby reserves for itself, its successors and assigns, the right to (1) dedicate streets, walks and alleys throughout the Property, and (2) reserve or grant easements of ingress and egress and for the installation, construction, maintenance, repair and replacement of utilities and related facilities, which may include, but shall not be limited to, sewer (sanitary and storm), gas, electric, telephone, cable television, electronic communications of all sorts, and water lines, upon, over, under, and across the Property, as it in its sole discretion deems proper or appropriate. Further, Declarant hereby reserves temporary construction easements for the construction, repair, removal, maintenance, and reconstruction of improvements within the Property, including the right to remove, on a temporary basis, fences, driveways, sprinkler systems, landscaping, and other improvements as shall be reasonably necessary to enable Declarant to complete the development and improvement of the Property; provided that any such improvement removed by Declarant shall be replaced and/or restored, upon completion of the construction activities, to substantially their former condition. All claims for damages, if any, arising out of such construction or other activities by Declarant are hereby waived by each Owner and the Association.
- C. Full rights of ingress and egress shall be had by Declarant, any governmental authority having jurisdiction over the Property, and any utility company which provides utilities to the Property, at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would

constitute interference with the use of such easement, or with the use, maintenance, operation, or installation of such utility. All claims for damages, if any, arising out of the installation, construction, operation, maintenance, repair or removal of utilities on account of temporary or other inconvenience caused thereby, against the Declarant or any utility company or governmental authority, or any of their agents or servants are waived by each Owner and the Association.

15. **Architectural Control**

A. **Architectural Control Committee.** Declarant shall have the power to designate and appoint an Architectural Control Committee consisting of not less than 3 qualified persons, which shall serve at the pleasure of the Declarant. After the Declarant no longer owns any Lot in the subdivision or after the Declarant has assigned the right of control to the Home Owner's Association by instrument in writing and recorded of record, the Architectural Control Committee shall serve at the pleasure of the Board of Directors of the Home Owner' s Association. Until Declarant designates and appoints in writing an Architectural Control Committee, Declarant shall fill that function and shall have full authority to take all actions set out herein to be undertaken by the Architectural Control Committee.

B. **Approval of Plans and Specifications.** The Architectural Control Committee must review and approve in writing all of the following projects on the Property:

- (1) Construction of any building, fence, wall or other structure.
- (2) Any exterior addition, change, or alteration in any building, fence, wall, or other structure.
- (3) Any landscaping or grading of any Lot or Lots.

C. **Application for Approval.** To obtain approval to do any of the work described herein, an Owner must submit a written application to the Architectural Control Committee showing the plans and specifications for the proposed work. Such plans and specifications shall detail the nature, shape, height, materials, colors, and location of the proposed work.

D. **Standard for Review.** The Architectural Control Committee shall review applications for proposed work in order to (1) ensure conformity of the proposal with these covenants, conditions, and restrictions and (2) ensure harmony of external design in relation to surrounding structures and topography. An application can be rejected for providing insufficient information. The Committee shall have broad, discretionary authority to interpret and apply these standards. In rejecting an application, the Committee should detail the reasons for rejection and suggest how the applicant could remedy the deficiencies.

E. **Failure of Committee to Act.** If the Architectural Control Committee fails either to approve or reject an application for proposed work within 60 days after submission, then Committee approval shall not be required, and the applicant shall be deemed to have fully complied with this Article.

F. Building Materials; Type of Construction. Unless otherwise approved by the Committee, the exterior wall area of all residences above the foundation excluding detached garages (but not excluding attached garages), gables, windows, and door openings must be of masonry, stucco, redwood, cedar, stone, Hardy Board, or brick veneer. No structure of any kind or character which incorporates frame construction on the exterior shall be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is of redwood or cedar material. The use of cedar wood shingles or other combustible material for roofing is prohibited. Notwithstanding the foregoing, the Declarant or the Architectural Control Committee is empowered to waive this restriction, if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood.

G. Waiver. So long as Declarant owns a Lot in the subdivision, Declarant will have the power to waive as to any specific Lot any of the restrictions, in whole or in part, set out herein. Any such waiver shall not constitute a waiver to the full enforcement of these restrictions as to any other Lot in the subdivision or a waiver of any portions of these restrictions not waived as to that particular Lot.

H. NO LIABILITY. NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF DESIGN GUIDELINES SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS, OR DESIGN GUIDELINES WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED IMPROVEMENTS. SUCH APPROVALS AND DESIGN GUIDELINES SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENCE OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS ARTICLE IS MADE ON THE BASIS OF AESTHETIC CONSIDERATIONS ONLY AND NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR ANY MEMBER OF ANY OF THE FOREGOING SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR THE ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS, NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR ANY MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE APPROVED OR DISAPPROVAL OF OR NON-COMPLIANCE WITH ANY PLANS OR SPECIFICATION. THE MANNER OR QUALITY OF APPROVED CONSTRUCTION OR MODIFICATIONS TO ANY DWELLING UNIT.

16. **Home Owner's Association**

A. **Creation.** Declarant reserves the right to create a Home Owner' s Association for the subdivision. If such an association is created, the Owners of Lots within the subdivision shall constitute the Association. Each Owner of a Lot, including Declarant, shall automatically be a member of any such Association. Association membership shall be appurtenant to ownership of a Lot. Ownership of a Lot is the sole criterion for membership in the Association.

B. **Transfer of Membership.** Association membership will be transferred to the grantee of a conveyance of a Lot when such conveyance is filed of record in the real property records of Henderson County, Texas. Membership shall not be assigned, pledged, or transferred in any other way. Any attempt to make a prohibited transfer shall be void.

C. **Management of Association.** Any such Association shall be incorporated as a nonprofit corporation. The Association shall be managed by its Board of Directors pursuant to the procedures set forth in the Association' s articles of incorporation and bylaws, subject to this Declaration.

D. **Membership Voting, Elections, and Meetings.** The Owners of a Lot shall have one vote in the Association. Any person or entity that holds an interest in and to a Lot merely as security for the performance of an obligation shall not be a member until such time as the holder or its successor acquires title to the Lot through foreclosure or conveyance in lieu thereof. If there are multiple Owners for any one Lot and a dispute shall arise as to a vote, then the Owner who is first named in the conveyance(s) or other instruments transferring title that are filed of record shall be entitled to cast the vote for that Lot. The Owners shall elect a Board consisting of 3 directors, vote on any other matter the Board chooses to place before the membership, and discuss any matter of Association business that the Board or any Owner wishes to bring before the entire membership.

E. **Duties and Powers of Board of Directors.** Through the Board of Directors, the Association shall have the following powers and duties:

- (1) To adopt rules and regulations to implement this Declaration and the Association' s bylaws.
- (2) To enforce this Declaration, the bylaws, its rules and regulations and assess fines for violations thereof.
- (3) To elect officers of the Board and select members of the Architectural Control Committee when that power devolves to the Board.
- (4) To delegate its powers to committees, officers, or employees.
- (5) To prepare a balance sheet and operating income statement for the Association and deliver a report to the membership at its annual meeting.
- (6) To establish and collect regular assessments to defray expenses attributable to the Association' s duties, to be levied against each Owner.
- (7) To establish and collect special assessments for capital improvements or other purposes.

- (8) To file liens against Lot Owners because of nonpayment of assessments and fines duly levied and to foreclose on those liens.
- (9) To receive complaints regarding violations of this Declaration, the bylaws, or the rules and regulations.
- (10) To hold hearings to determine whether to discipline Owners who violate this Declaration, the bylaws, or the rules and regulations.
- (11) To give reasonable notice to all Owners of all annual meetings of the membership and all discipline hearings
- (12) To enforce the provisions of this Declaration, the bylaws, or the rules and regulations and to enjoin and seek damages from any Owner for violation of such provision or rules.
- (13) To hold regular meetings of the Board at least quarterly.
- (14) To accept property as a Common Area, to manage and maintain any Common Area in a state of high quality and in good repair, and to provide adequate reserves for repairs or replacements.
- (15) To pay taxes and assessments that are or could become a lien on any Common Area.
- (16) To pay the costs of any liability insurance and fire insurance on any Common Area and any liability insurance for officers, committee members and members of the Board.
- (17) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks), and, generally, to have all of the powers necessary or incidental to the operation and management of the Association and the subdivision.

F. **Liens.** Any and all assessments that are assessed by the Board of Directors shall be assessed pro rata on a per Lot basis at a uniform rate for each Lot in the subdivision. Any such assessments and any fines assessed by the Board of Directors shall be the personal liability of each Owner of the Lot and shall also constitute a lien against the Lot(s) owned by the Owner subject to assessment or fine to the full extent allowed by law if the assessment or fine is not timely paid, and that lien shall have priority over any other charges against the Lot(s) other than (1) assessments, liens, and charges in favor the State of Texas or a political subdivision of the State of Texas for taxes against the Lot that are due and unpaid or (2) an obligation due against the Lot under a validly recorded mortgage. At the discretion of the Board of Directors any such lien can be non-judicially foreclosed after the giving of all notices required by law or it can be judicially foreclosed.

17. No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners; Members; the Board of Directors; officers in the Association; or the Association. Disputes between Owners that are not regulated by these Restrictions shall not be subject to the dispute resolution process.

In a dispute between any of the above entities or individuals, the parties must submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a

mutually selected mediator. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in the Subdivision, work for any of the parties, represent any of the parties, nor have a conflict of interest with any of the parties. The Board shall endeavor to maintain a list of potential mediators, but the parties will be in no way limited to their choice by this list. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than 30 days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before a mediation may be scheduled.

The provisions of this Declaration dealing with Alternate Dispute Resolution shall not apply to the collection of assessments or fines by the Association as set out in this Declaration nor to the foreclosure of liens securing any such assessments or fines.

18. If any covenant, condition, or restriction contained herein, or any portion thereof, shall be invalid, which invalidity shall not be presumed until the same is determined by the judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant, or restriction, each of which shall remain in full force and effect.

This Declaration is executed on _____, 2004.

SUNNY BAY ESTATES LIMITED
PARTNERSHIP

BY: ELYSIAN DEVELOPMENT
COMPANY, INC

BY: _____
GARY BROWN, President

THE STATE OF TEXAS

COUNTY OF SMITH

Before me _____, a notary public on this day personally appeared
GARY BROWN,

Check One:

_____ Known to me; or

_____ Proved to me on the oath of _____; or

_____ Proved to me through _____

(described identity card or document)

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____, 2004.

My commission expires:

NOTARY PUBLIC IN AND FOR THE STATE
OF TEXAS

PRINTED NAME: _____