

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
RIVER BIRCH PLACE PHASE I
LUMBERTON, HARDIN COUNTY, TEXAS**

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made and executed on the date hereinafter set forth by BIRCH PLACE ONE, LTD. (the "Declarant"), a Texas Limited Liability Partnership.

WHEREAS, Declarant is the owner of a certain 10.2856 acre tract or parcel of land out of and part of the R.C. Rogers Survey, Abstract No. 46, in Lumberton, Hardin County, Texas, which 10.2856 acre tract of land (the "Land") is more fully and particularly described as follows:

Legal Description: 10.2856 Acre Tract or Parcel of Land
R.C. Rogers Survey, Abstract No. 46
Hardin County, Texas

BEING a 10.2856 acre tract or parcel of land situated in the R.C. Rogers Survey, Abstract No. 46, Hardin County, Texas and being out of and part of that certain called 140.00 acre tract of land as described in a "Special Warranty Deed" from Ben Adler Et Al Interests, Ltd. to Jack Mossburg d/b/a Mossburg Construction as recorded in Volume 1393, Page 542, Official Public Records, Hardin County, Texas and also being out of and part of that certain called 3.9595 acre tract of land as described in General Warranty Deed from Jack Mossburg d/b/a Mossburg Construction to Birch Place One, Ltd. as recorded in Book 1512, Page 451, Official Public Records, Hardin County, Texas, and also out of and a part of that certain called 40.0158 acre tract as described in General Warranty Deed from Joan and Lynn, LLC, to Birch Place One, Ltd. as recorded in Book 1512 Page 457, Official Public Records, Hardin County, Texas, said 10.2856 acre tract being more particularly described as follows:

NOTE: All bearings are based on the East line of that certain called 140.00 acre tract as described in "Special Warranty Deed" from Ben Adler et. al. Interests, LTD to Jack Mossburg d/b/a/ Mossburg Construction as recorded in Volume 1393, Page 542 Official Public Records, Hardin County, Texas as SOUTH 00°20'00" WEST.

COMMENCING at a concrete monument found for the Southeast corner of the said 140.00 acre Mossburg tract, said corner also being the Northeast corner of Boykin West, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page

166A, Plat Records, Hardin County, Texas and also being in the West line of Boykin Place, Units 2 & 3, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 165, Plat Records, Hardin County, Texas;

THENCE SOUTH 80°55'28" WEST, along and with the Southerly line of the said 140.00 acre Mossburg tract, for a distance of 1356.73 feet to a point for corner, said corner being the intersection of the South line of the said 140.00 acre Mossburg tract and the East line of a proposed 80 feet wide drainage right of way;

THENCE NORTH 26°39'52" WEST, over and across the said 140.00 acre Mossburg tract and along and with the East line of the said proposed 80.00 ft. wide drainage right of way, for a distance of 699.72 feet to the POINT OF BEGINNING of the tract herein described;

BEGINNING NORTH 26°39'52" WEST, along and with the Easterly line of the said proposed 80.00 ft. wide drainage right of way at a distance of 345.92 feet pass the Southerly line of the aforesaid 3.9595 acre Birch Place Ltd. tract and continuing for a total distance of 213.00 feet to an angle point, the same being located in the proposed Southerly right of way line of River Birch Drive;

THENCE SOUTH 56°12'38" WEST, for a distance of 80.62 feet to a point for corner;

THENCE SOUTH 63°20'08" WEST, perpendicular to the East right-of-way line of U.S. Highway 69 and 287 and the West line of the said 140.00 acre Mossburg tract, for a distance of 616.00 feet to a point for corner;

THENCE NORTH 26°39'52" WEST, continuing along and with the East right-of-way line of U.S. Highway 69 and 287 and the West line of the said 140.00 acre Mossburg tract, for a distance of 80.00 feet to a point for corner;

THENCE NORTH 63°20'08" EAST, perpendicular to the East right-of-way line of U.S. Highway 69 and 287 and the West line of the said 140.00 acre Mossburg tract, for a distance of 616.00 feet to a point for corner;

THENCE NORTH 70°27'38" EAST, for a distance of 80.62 feet to a point for corner, said point being located on the Westerly line of said 3.9595 acre tract and Easterly line of the proposed 80.00 ft. wide drainage right of way;

THENCE NORTH 26°39'52" WEST, continuing along and with the Easterly line of the said proposed 80.00 ft. wide drainage right of way and Westerly

line of the said 3.9595 acre tract for a distance of 32.00 feet to a 5/8" iron rod with cap found for Northwest corner of said River Birch Addition Phase I and said 3.9595 acre tract;

THENCE NORTH 63°20'08" EAST, along the North line of the aforesaid 3.9595 acre tract for a distance of 400.00 feet to a 5/8" iron rod with cap found for angle point in the North line of said subdivision;

THENCE SOUTH 74°00'20" EAST, continuing along the North line of said 3.9595 acre tract for a distance of 450.10 feet to a 5/8" iron rod with cap found for the most Easterly corner of said 3.9595 acre tract and North line of the aforesaid 40.0158 acre tract;

THENCE NORTH 84°45'39" EAST, over and across the aforesaid 40.0158 acre tract at a distance of 266.86 feet pass the Southeast corner of that certain called Option Tract II and continuing for a total distance of 437.88 feet to the Northeast corner of said River Birch Subdivision Phase I;

THENCE SOUTH 02°21'07" EAST for a distance of 60.08 feet to a 5/8" iron rod with cap set for corner;

THENCE SOUTH 84°45'39" WEST, along and with the proposed Southerly right of way line of line of River Birch Drive for a distance of 88.98 feet to a 5/8" iron rod with cap set for corner;

THENCE SOUTH 01°37'47" WEST, for a distance of 15.94 feet to a 5/8" iron rod with cap set for corner;

THENCE NORTH 88°22'13" WEST for a distance of 50.00 feet to a 5/8" iron rod with cap set for corner;

THENCE SOUTH 01°37'47" WEST for a distance of 46.14 feet to a 5/8" iron rod with cap set for corner;

THENCE SOUTH 14°11'11" WEST for a distance of 68.24 feet to a 5/8" iron rod with cap set for corner;

THENCE SOUTH 84°45'39" WEST for a distance of 163.62 feet to a 5/8" iron rod with cap set for corner;

THENCE SOUTH 63°20'08" WEST for a distance of 166.51 feet to a 5/8" iron rod with cap set for corner;

THENCE SOUTH 87°34'33" WEST for a distance of 359.89 feet to a 5/8" iron rod with cap set for corner;

THENCE SOUTH 26°39'52" EAST for a distance of 306.77 feet to a 5/8" iron rod with cap set for corner;

THENCE SOUTH 63°20'08" WEST, along and with the Southerly line of the herein described tract, over and across the aforesaid 40.0158 acre Birch Place Ltd. tract, for a distance of 158.00 feet to an angle point, said point being located on the Westerly right of way line of Winding Brook Drive;

THENCE NORTH 26°39'52" WEST, along the Westerly right of way line of Winding Brook Drive for a distance of 18.08 feet to an angle point in the Southerly line of the herein described 10.2856 acre tract;

THENCE SOUTH 63°20'08" WEST, along and with the Southerly line of the herein described tract, continuing over and across the aforesaid 40.0158 acre Birch Place Ltd. tract, for a distance of 108.00 feet to the POINT OF BEGINNING and containing 10.2856 Acres, more or less.

WHEREAS, Declarant has caused the Land to be subdivided and platted into an addition to the City of Lumberton, Hardin County, Texas, known and to be known as "RIVER BIRCH PLACE – PHASE I" an Addition to the City of Lumberton, Hardin County, Texas" (the "Addition"), in accordance with the Final Plat of said Addition prepared by Mark W. Whiteley and Associates, Inc. and filed for record in the office of the County Clerk of Hardin County, Texas, contemporaneously with the filing of this Declaration (the "Plat"); and

WHEREAS, Declarant desires to (i) dedicate the easements for streets, utilities and storm sewer reflected on the Plat; (ii) reserve in favor of itself and/or the Association herein established certain easements on and across the Lots in the Addition; and (iii) impose the protective and restrictive covenants set forth later herein on the Lots in the Addition and on the Common Area of the Addition:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that Declarant hereby adopts the Plat of the Addition and hereby dedicates the easements for streets, utilities and storm drainage as reflected upon the Plat, and hereby imposes on the Lots in the Addition the basic restrictions set forth on the Plat.

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the Lots in the Addition, and for the purpose of providing for the orderly development, use and enjoyment of the Lots in the Addition, Declarant hereby declares that all of the Land in the Addition shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions hereinafter set forth, which shall constitute covenants running with the Land and shall be binding upon all parties having any right, title or interest in the Land, or any part thereof, and upon such parties' respective heirs, successors, legal representatives, devisees, lessees and assigns, and shall inure

to the benefit of such parties and their respective heirs, successors, legal representatives, devisees, lessees and assigns.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to RIVER BIRCH PLACE OWNERS ASSOCIATION, a Texas Non-Profit Limited Liability Company its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Addition, including contract seller, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Addition" shall mean and refer to the subdivided real property hereinbefore described.

Section 4. "Common Area" shall mean and refer to and include any real property (including all improvements now or hereafter placed, erected, constructed, installed or located thereon) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association shall be all of the property in the Addition, excluding: (a) The platted Lots reflected on the recorded plat or plats of the Addition and the improvements located thereon; and (b) The street easements (inclusive of all concrete streets constructed therein) reflected on the recorded plat or plats of the Addition, and all water, sanitary sewer, storm sewer, electric, telephone, natural gas, cable television and other utility lines (and all appurtenances thereto) now or hereafter lying, installed and maintained in any street, utility or storm sewer easements reflected on the recorded plat or plats of the Addition or in any utility or storm sewer easements herewith or hereafter granted, conveyed or dedicated in, on or across any Lots in the Addition or the Common Area of the Addition.

Without limitation of the foregoing, the Common Area of the Addition includes:

(A) The "Landscaping Area" extending approximately 10 feet on either side of River Birch Drive, and extending approximately 700 feet from U.S. Highway 69 to Winding Brook Drive, shown and reflected on the Plat of the Addition, together with the sidewalks, perimeter fences and other improvements now or hereafter constructed thereon, any lighting or sprinkler system now or hereafter installed therein, and all plantings and landscaping now or hereafter planted and maintained therein;

(B) The island or esplanade located within the River Birch Drive right-of-way extending approximately 700 feet, from U.S. Highway 69 to Winding Brook Drive as shown and reflected on the Plat of the Addition, together with the Addition identification sign and

other improvements now or hereafter constructed thereon, any lighting and sprinkler systems now or hereafter installed therein, and all plantings and other landscaping now or hereafter planted and maintained therein;

(C) The forty by one hundred twenty seven foot (40' X 127') "Common Lot" shown and reflected on the Plat of the Addition, located adjacent to Lot 1, Block 5, together with the mail kiosk, kiosk shelter and all other buildings and other improvements now or hereafter constructed thereon, any lighting and sprinkler systems now or hereafter installed therein, and all plantings and other landscaping now or hereafter planted and maintained therein.

(D) The thirty-five by one hundred eight foot (35' X 108') "Common Lot" shown and reflected on the Plat of the Addition, located adjacent to Lot 1, Block 6, together with any improvements now or hereafter constructed thereon, any lighting and sprinkler systems now or hereafter installed therein, and all plantings and other landscaping now or hereafter planted and maintained therein.

(E) The approximately 3 acre community park to be located in the area designated for future expansion south of River Birch Drive and east of Winding Brook Drive, together with all playground equipment, other buildings or structures, sidewalks, perimeter fences and other improvements now or hereafter constructed thereon, any lighting or sprinkler system, or other plumbing, now or hereafter installed therein, and all plantings and landscaping now or hereafter planted and maintained therein; and

(F) The landscape islands located at the intersections of River Birch Drive and Winding Brook Drive, and at River Birch Drive and River Birch Circle, and identified more specifically, as Future Development Tract I, together with any improvements now or hereafter constructed thereon, any lighting and sprinkler systems now or hereafter installed therein, and all plantings and other landscaping now or hereafter planted and maintained therein;

Section 5. "Lot" shall mean and refer to any plat of land shown upon the recorded plat of the Addition, with the exception of the Common Area.

Section 6. "Member" shall mean every person or entity who holds membership in the Association.

Section 7" "Declarant" shall mean and refer to BIRCH PLACE ONE, LTD, its successors and assigns. However, as used in this paragraph, the term "assigns" shall not be construed to mean, refer to or include any person or entity which shall acquire from BIRCH PLACE ONE, LTD one (1) or more of the Lots in the Addition, whether improved or unimproved, for occupancy or resale, unless BIRCH PLACE ONE, LTD, or its successor, expressly assigns to such assignee all of its rights and privileges as "Declarant" under this Declaration.

Section 8. "Future Development Tracts" shall mean and refer to all or any part of three (3) tracts or parcels of land as follows:

TRACT I: The remaining part of that certain 40.0158 Acre Tract or Parcel of Land out of the R.C. Rogers Survey, Abstract No. 46 in Hardin County, Texas more particularly described as follows:

BEING a 40.0158 acre tract or parcel of land situated in the R.C. Rogers Survey, Abstract No. 46, Hardin County, Texas and being out of and part of that certain called 140.00 acre tract of land as described in a "Special Warranty Deed" from Ben Adler Et Al Interests, Ltd. to Jack Mossburg d/b/a Mossburg Construction as recorded in Volume 1393, Page 542, Official Public Records, Hardin County, Texas, said 40.0158 acre tract being more particularly described as follows:

NOTE: All bearings are based on the East line of the above referenced 140.00 acre tract as SOUTH 00°20'00" WEST as recorded in the above referenced Volume 1393, Page 542, Official Public Records, Hardin County, Texas.

BEGINNING at a concrete monument found for the Southeast corner of the said 140.00 acre Mossburg tract, said corner also being the Northeast corner of Boykin West, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 166A, Plat Records, Hardin County, Texas and also being in the West line of Boykin Place, Units 2 & 3, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 165, Plat Records, Hardin County, Texas;

THENCE SOUTH 80°55'28" WEST, for the boundary between the tract herein described and the said Boykin West, the same being the South line of the said 140.00 acre Mossburg tract, for a distance of 1356.73 feet to a point for corner, said corner being the intersection of the South line of the said 140.00 acre Mossburg tract and the East line of a proposed 80 feet wide drainage right-of-way;

THENCE NORTH 26°39'52" WEST, over and across the said 140.00 acre Mossburg tract and along and with the East line of the said proposed 80 feet wide drainage right-of-way, for a distance of 1045.64 feet to a point for corner;

THENCE NORTH 63°20'08" EAST, for a distance of 731.00 feet to a point for corner;

THENCE NORTH 84°45'39" EAST, for a distance of 712.16 feet to a point for corner;

THENCE SOUTH 09°04'32" EAST, for a distance of 331.44 feet to a point for corner;

THENCE NORTH 80°55'28" EAST, for a distance of 404.27 feet to a point for corner, said corner being in the East line of the said 140.00 acre Mossburg tract and in the West line of Candlewick, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 137, Plat Records, Hardin County, Texas;

THENCE SOUTH 00°20'00" WEST, for the boundary between the tract herein described and the said Candlewick and Boykin Place, Unit 1, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 163, Plat Records, Hardin County, Texas and the said Boykin Place, Unit 2 & 3, for a distance of 850.00 feet to the **POINT OF BEGINNING** and containing 40.0158 Acres, more or less.

TRACT II: That certain 29.1265 Acre Tract or Parcel of Land out of the R.C. Rogers Survey, Abstract No. 46 located in Hardin County, Texas, and more particularly described as follows:

BEING a 29.1265 acre tract or parcel of land situated in the R.C. Rogers Survey, Abstract No. 46, Hardin County, Texas and being out of and part of that certain called 140.00 acre tract of land as described in a "Special Warranty Deed" from Ben Adler Et Al Interests, Ltd. to Jack Mossburg d/b/a Mossburg Construction as recorded in Volume 1393, Page 542, Official Public Records, Hardin County, Texas, said 29.1265 acre tract being more particularly described as follows:

NOTE: All bearings are based on the East line of the above referenced 140.00 acre tract as SOUTH 00°20'00" WEST as recorded in the above referenced Volume 1393, Page 542, Official Public Records, Hardin County, Texas.

COMMENCING at a concrete monument found for the Southeast corner of the said 140.00 acre Mossburg tract, said corner also being the Northeast corner of Boykin West, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 166A, Plat Records, Hardin County, Texas and also being in the West line of Boykin Place, Units 2 & 3, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 165, Plat Records, Hardin County, Texas;

THENCE SOUTH 80°55'28" WEST, for the boundary between the tract herein described and the said Boykin West, the same being the South line of the said 140.00 acre Mossburg tract, for a distance of 1356.73 feet to a point for corner, said corner being the intersection of the South line of the said 140.00 acre Mossburg tract and the East line of a proposed 80 feet wide drainage right-of-way;

THENCE NORTH 26°39'52" WEST, over and across the said 140.00 acre Mossburg tract and along and with the East line of the said proposed 80 feet wide drainage right-of-way, for a distance of 1045.64 feet to the **POINT OF BEGINNING** of the tract herein described;

THENCE NORTH 26°39'52" WEST, continuing along and with the East line of the said proposed 80 feet wide drainage right-of-way, for a distance of 425.95 feet to a point for corner, said corner being an angle point in the East line of the said proposed 80 feet wide drainage right-of-way;

THENCE NORTH 09°04'23" WEST, continuing along and with the East line of the said proposed 80 feet wide drainage right-of-way, for a distance of 902.09 feet to a point for corner, said corner being in the North line of the said 140.00 acre Mossburg tract and in the South line of Forest Drive (based on a width of 60 feet) identified as Parcel I as described in a "City Street Right of Way Easement" from Kirby Forest Industries, Inc. to the City of Lumberton as recorded in Volume 838, Page 105, Deed Records, Hardin County, Texas;

THENCE NORTH 80°55'02" EAST, along and with the North line of the said 140.00 acre Mossburg tract and the South right-of-way line of Forest Drive, for a distance of 1091.78 feet to a point for corner;

THENCE SOUTH 09°04'23" EAST, for a distance of 1105.22 feet to a point for corner;

THENCE SOUTH 84°45'39" EAST, for a distance of 266.87 feet to a point for corner;

THENCE SOUTH 63°20'08" WEST, for a distance of 731.00 feet to the **POINT OF BEGINNING** and containing 29.1265 Acres, more or less.

TRACT III: That certain 29.1266 Acre Tract or Parcel of Land out of the R.C. Rogers Survey, Abstract No. 46 in Hardin County, Texas, and more particularly described as follows:

BEING a 29.1266 acre tract or parcel of land situated in the R.C. Rogers Survey, Abstract No. 46, Hardin County, Texas and being out of and part of that certain called 140.00 acre tract of land as described in a "Special Warranty Deed" from Ben Adler Et Al Interests, Ltd. to Jack Mossburg d/b/a Mossburg Construction as recorded in Volume 1393, Page 542, Official Public Records, Hardin County, Texas, said 29.1266 acre tract being more particularly described as follows:

NOTE: All bearings are based on the East line of the above referenced 140.00 acre tract as SOUTH 00°20'00" WEST as recorded in the above referenced Volume 1393, Page 542, Official Public Records, Hardin County, Texas.

COMMENCING at a concrete monument found for the Southeast corner of the said 140.00 acre Mossburg tract, said corner also being the Northeast corner of Boykin West, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 166A, Plat Records, Hardin County, Texas and also being in the West line of Boykin Place, Units 2 & 3, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 165, Plat Records, Hardin County, Texas;

THENCE NORTH 00°20'00" EAST, along and with the East line of the said 140.00 acre Mossburg tract and for the boundary between the tract herein described and the said Boykin Place, Unit 2 & 3, and Boykin Place, Unit 1, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 163, Plat Records, Hardin County, Texas and Candlewick, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 137, Plat Records, Hardin County, Texas for a distance of 850.00 feet to the **POINT OF BEGINNING** of the tract herein described;

THENCE SOUTH 80°55'28" WEST, for a distance of 404.27 feet to a point for corner;

THENCE NORTH 09°04'32" WEST, for a distance of 331.44 feet to a point for corner;

THENCE SOUTH 84°45'39" WEST, for a distance of 445.29 feet to a point for corner;

THENCE NORTH 09°04'23" WEST, for a distance of 1105.22 feet to a point for corner, said corner being in the North line of the said 140.00 acre Mossburg tract and in the South line of Forest Drive (based on a width of 60

feet) identified as Parcel I as described in a "City Street Right of Way Easement" from Kirby Forest Industries, Inc. to the City of Lumberton Volume 838, Page 105, Deed Records, Hardin County, Texas;

THENCE NORTH 80°55'02" EAST, along and with the North line of the said 140.00 acre Mossburg tract and the South right-of-way line of Forest Drive, for a distance of 1091.59 feet to a concrete monument found for corner, said corner being the Northeast corner of the said 140.00 acre Mossburg tract and in the West line of Tall Pines No. 2, a subdivision of the City of Lumberton, Hardin County, Texas, according to the plat thereof recorded in Volume 3, Page 153, Plat Records, Hardin County, Texas;

THENCE SOUTH 00°20'00" WEST, along and with the East line of the said 140.00 acre Mossburg tract and for the boundary between the tract herein described and the said Tall Pines No. 2 and the said Candlewick, for a distance of 1486.59 feet to the **POINT OF BEGINNING** and containing 29.1266 Acres, more or less.

SAVE and EXCEPT that certain called 1.0263 acre tract of land conveyed by Ben Adler, et al. to the City of Lumberton as recorded in Volume 867, Page 44, Deed Records, Hardin County, Texas.

Section 9. "Supplemental Declaration" shall mean and refer to any supplemental or supplementary declaration of covenants, conditions and restrictions bringing additional property within the scheme of this Declaration and within the jurisdiction of the Association, as provided later herein.

Section 10. "Mortgage", "Deed of Trust" or "Trust Deed" shall mean and refer to a pledge of a security interest in or the creation of a lien upon a Lot (or Lots), together with any improvements thereon, to secure repayment of a loan made to the Owner(s) of such Lot or Lots (or made to another, but secured by such Lot or Lots).

Section 11. "Mortgagee" shall mean and refer to the beneficiary of, or secured party in, a Mortgage on a Lot or Lots.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is designated as RIVER BIRCH PLACE PHASE 1, an Addition to the City of Lumberton, County of Hardin,

State of Texas as shown and reflected upon the above referenced Plat of the Addition, which property may be sometimes referred to herein as the "Existing Property" or "River Birch Place Phase I."

Section 2. Additions of Property. Declarant, at its sole election, may bring within the scheme of this Declaration and within the jurisdiction of the Association all or any part of the Future Development Tract by Declarant's filing of record in the office of the County Clerk of Hardin County, Texas, a Supplemental Declaration describing such additional property and expressly subjecting such additional property to the scheme of this Declaration and to the jurisdiction of the Association, together with a plat of such additional property. Such Supplemental Declaration may contain complementary and supplementary provisions, conditions, covenants, restrictions and reservations, and may amend and modify the provisions, conditions, covenants, restrictions and reservations contained herein as they relate to or affect such additional property, but such Supplemental Declaration shall not in any manner revoke, modify or add to the covenants established by this Declaration as to the Existing Property. After any additional part or parts of the Future Development Tract are brought within the scheme of this Declaration and within the jurisdiction of the Association pursuant to the provisions of this paragraph or section, the term "Addition", as used herein, shall be deemed to mean, refer to and include River Birch Place Phase I, together with such additional part or parts of the Future Development Tract so brought within the scheme of this Declaration and within the jurisdiction of the Association pursuant to this Section 2.

Section 3. Waiver of Right to Add Property to Addition. At any time, the Declarant, in its sole discretion, may waive and relinquish its right to bring all or any specifically described part of the Future Development Tract within the scheme of this Declaration and within the jurisdiction of the Association pursuant to Section 2 above. Such waiver or relinquishment shall be effected by Declarant's execution and filing for record in the office of the County Clerk of Hardin County, Texas, a written statement stating (in essence) that the Declarant waives and relinquishes its right to bring any further part or parts of the Future Development Tract, or any specifically described part or parts of the Future Development Tract, within the scheme of this Declaration and within the jurisdiction of the Association. Subsequent to the execution and recordation of any such waiver, Declarant shall have no further right to bring any additional part or parts of the Future Development Tract within the scheme of this Declaration and within the jurisdiction of the Association; except, however, if the waiver or relinquishment is only as to any specifically described part or parts of the Future Development Tract, then Declarant shall have no right to thereafter bring such specifically described part or parts of the Future Development Tract within the scheme of this Declaration and within the jurisdiction of the Association, but shall have the right to bring all or any part or parts of the remainder of the Future Development Tract within the scheme of this Declaration and within the jurisdiction of the Association pursuant to the provisions of Section 2 above.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to that right of the Association to dedicate or transfer all or any part of the Common Area to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) of the members has been recorded.

Section 2. Delegation of Use Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment in and to the Common Area to the members of his family, his tenants, or contract purchasers, who reside on the property.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot, including Declarant or its successors, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 2. The Association shall have two (2) classes of voting membership:

- (a) CLASS A. The Class A Members shall be all Owners with the exception of the Declarant. After the Conversion Date, Declarant shall also become a Class A Member to the extent Declarant is the Owner of a Lot or Lots.
- (b) CLASS B. The Class B Members shall be the Declarant. The Class B Membership of Declarant shall cease and become converted to Class A Membership upon occurrence of the earlier of the following (the "Conversion Date):
 - (i) on the 1st day of January 2011; or
 - (ii) Such earlier date as may be established by Declarant in a supplemental Declaration to be recorded by Declarant.

Until the Conversion Date, the Class A Members shall not be entitled to vote (except as provided for the levying of Special Assessments for capital improvements under Article

V. Section 4 of the Declaration and amendments to the Declaration under Article XI. Section 6 therein). The Class B Members shall be entitled to one (1) vote for each lot in which it holds the interest required for membership.

From and after the Conversion Date (and at any time with respect to votes pertaining to Special Assessments for capital improvements and amendments to the Declaration), each Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for Association membership. Where more than one person or entity holds such interest in any Lot, all such persons collectively shall be a single Member, and the vote for such Member shall be exercised as the several parties shall determine among themselves, provided however, that in the aggregate no more than one (1) vote shall be cast with respect to each lot owned. If a member owns a Lot and in addition thereto owns & fraction of another Lot, then such Member's vote will be increased by the percentage in which that Member's interest bears to the total Lot. For example, if a Member owns one Lot and one-half of another Lot, then that Member will be entitled to 1.5 votes.

The membership of a person or entity in the Association shall terminate automatically whenever such person or entity ceases to be an Owner, except that such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Association or the Declaration during the period of ownership, nor impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

ARTICLE V

ASSESSMENTS

Section 1. Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it in the Addition, hereby covenants, and each Owner of a Lot in the Addition is hereby deemed to covenant by acceptance of Owner's deed for such Lot, whether or not it shall be so expressed in Owner's deed, to pay to the Association (i) annual assessments and (ii) special assessments for capital improvements. Such assessments will be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and a continuing lien of each Lot against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and a continuing lien of each Lot against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees shall also be the personal obligations of the person or persons who owned the Lot at the time the assessment fell due, but such personal obligation shall not pass to the successor in title to such person or persons unless expressly assumed by them.

Section 2. Purpose of Annual Assessments. The annual assessment levied by the Association shall be used exclusively: (i) to promote the health, safety, and welfare of the residents in the Addition; and (ii) for the improvement and maintenance of the Common Area within the Addition. Annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from annual assessments, the following:

- (a) Maintenance and repair of the Common Area.
- (b) Maintenance and repair of the street situated on the Common Area within the Addition; and water, sewer, storm drainage and other utility lines in or serving the Common Area.
- (c) Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitee, tenants and contract purchaser of any Owner, arising out of their occupancy and/or use of the Common Area. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association.
- (d) Workmen's compensation insurance to the extent necessary to comply with applicable laws, and any other insurance deemed necessary by the Board of Directors of the Association.
- (e) A standard fidelity bond covering all members of the Board of Directors of the Association and all other employees of the Association in an amount to be determined by the Board of Directors.
- (f) Any other materials, supplies, labor, services, maintenance, repairs, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or by law, or which shall be necessary or proper in the opinion of the Board of Directors, for the benefit of Lot owners, or for the enforcement of these restrictions.
- (g) Cost of water, electricity and other utility services for the Common Area of the Addition.
- (h) Taxes and assessments levied by any taxing authorities on the Common Area and premiums for insurance maintained by the Association, including (i) fire and extended coverage insurance on any insurable improvements on the Common Area, together with any equipment, fixtures or other personal property of the Association located on the Common Area, and (ii) liability insurance in favor of the Association, including premises liability coverage on the Common Area of the Addition;
- (i) Any expenses which the Association is required to incur or pay pursuant to the terms of this Declaration or the Bylaws, or which shall be necessary or

proper in the opinion of the Board of Directors of the Association, for (I) the administration of the affairs of the Association, (ii) the performance of the duties of the Association, or (iii) the enforcement of the provisions of this Declaration, the Bylaws of the Association or any rules and regulations of the Association; and

- (j) Any other costs or expenses which shall be determined by a vote of the Members, from time to time, to be a common expense of the Association.

Section 3. Power to Fix Regular Annual Assessments. The power and authority to fix and levy the regular annual assessments shall rest exclusively with the Board of Directors of the Association, and when the same are determined and fixed by the Board of Directors, as herein provided, same shall be final, conclusive and binding upon each Owner, his heirs, personal representatives, successors and assigns, including contract purchasers.

Section 4. Special Assessments for Capital Improvements. In addition to the regular annual assessments authorized and provided for above, the Association may fix and levy, in any assessment year, a special assessment applicable to that year only for the purpose of paying the costs of construction, reconstruction, repair or replacement of any capital improvement on the Common Area. Any such special assessment, before becoming effective and a binding obligation of the Owners, must be approved by a two-thirds (2/3rds) vote of each class of Members who are voting, either in person or by proxy, at a meeting duly called for that purpose.

Section 5. Notice and Quorum for Action Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 above shall be sent to all members not less than ten (10) days, nor more than sixty (60) days, in advance of such meeting. Such notice shall state that the purpose (or one of the purposes) of the meeting is to vote upon a special assessment, specifying the purpose of the proposed special assessment. At the first such meeting called, the presence of Members, either in person or by proxy, entitled to cast fifty percent (50%) or more of all the votes of each class shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum for the first meeting. No such second meeting shall be held more than sixty (60) days after the first called meeting.

Section 6. Uniform Rate of Assessment. Except as provided below in this Section, regular annual assessments and special assessments for capital improvements (but not the additional Lot assessments provided for later herein) must be fixed at a uniform rate for all Lots in the Addition. Where two (2) or more adjacent platted Lots, or one (1) platted Lot and a portion of an adjacent platted Lot, have been combined and consolidated into a single Lot pursuant to Section 32 of Article IX of this Declaration, such resulting Lot shall

be assessed (for regular annual assessment and special assessment for capital improvement purposes) on the basis of the number of platted Lots constituting the resulting Lot. By way of example, a consolidated Lot consisting of two (2) platted Lots will be assessed two hundred percent (200%) of the regular annual assessment or special assessment for capital improvements fixed for a single platted Lot.

Section 7. Collection of Regular Annual Assessments and Special Assessments. The regular annual assessment shall be collected by the Association on a monthly, quarter-annual, semi-annual or annual basis, as determined by the Board of Directors from time to time. Special assessments for capital improvements shall be collected on such basis as shall be determined by the vote of the membership in approving the establishment and levy of such special assessments.

Section 8. Establishment and Notice of Regular Annual Assessment. At the organizational meeting of the initial Board of Directors of the Association, the regular annual assessment for the first calendar year shall be fixed and established by the Board of Directors, and written notice thereof (including the basis upon which such regular annual assessment is to be collected) shall be forthwith given to each Owner subject thereto. The first such regular annual assessment shall be adjusted according to the number of months remaining in the annual (calendar year) assessment period. Thereafter, not less than thirty (30) days prior to the commencement of each calendar-year assessment period, the Board of Directors of the Association shall fix and establish the regular annual assessment for the ensuing assessment year and shall give written notice thereof (including the basis upon which such regular annual assessment is to be collected) to every Owner subject to such regular annual assessment. Upon a person or entity becoming the Owner of a Lot in the Addition (and upon notification of such fact given to the Board of Directors of the Association), it shall be the duty of the Board of Directors to notify such new Owner of the regular annual assessment charged upon his Lot (in the same manner as notice is given to those Owners owning Lots as of the commencement of any annual assessment period). The failure of the Board of Directors to give written notice to any Owner, as herein required, shall not in any manner exempt or relieve such Owner from his obligation to pay the regular annual assessment on his Lot or Lots, but such Owner shall not be in default for failure to pay his regular annual assessment (on the due date or dates thereof) until notice of such regular annual assessment is given to such Owner in the manner herein provided. Each Owner (including Declarant) covenants and agrees to give written notice to the Board of Directors of the Association upon the sale or transfer by such Owner of his Lot, including the name and mailing address of the Lot purchaser(s) and the date upon which the sale or transfer was or will be effected.

Section 9. Limited Exemption from Regular Annual Assessments. Notwithstanding anything herein to the contrary, Declarant shall not be liable for or obligated to pay regular annual assessments on any unimproved Lot, nor on any improved Lot until thirty (30) days after improvements have been substantially completed thereon. Further, notwithstanding anything herein to the contrary, a Builder (as that term is

hereinafter defined) shall not be liable for or obligated to pay regular annual assessments on any Lot owned by such Builder until the earliest of (i) the substantial completion of improvements thereon, (ii) the conveyance by such Builder of the Lot (except a reconveyance to Declarant), or (iii) one hundred eighty (180) days after such Builder has acquired record title to such Lot. For the purposes of this paragraph, the term "Builder" shall be construed to mean a person or entity who shall purchase or acquire from Declarant one (1) or more unimproved Lots for the purpose of construction of improvements thereon for sale to the public.

Section 10. Date of Commencement of Regular Annual Assessments. The regular annual assessments provided for above in this Article shall commence as to each Lot on the first (1st) day of the calendar month next following:

- (a) The conveyance of a Lot by Declarant to an Owner (other than a Builder);
- (b) Thirty (30) days following the substantial completion of improvements upon a Lot owned by Declarant; or
- (c) With respect to a Lot conveyed by Declarant to Builder, the earlier of (i) the substantial completion improvements thereon, (ii) the conveyance by the Builder of such Lot (except for a reconveyance to Declarant), or (iii) one hundred eighty (180) days after the Builder has acquired record title to such Lot.

Section 11. Certification of Payment of Assessments. The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessments on any specified Lot have been paid. A properly executed certificate as to the status of assessments on a particular Lot shall be conclusive and binding upon the Association as of the date thereof as to any and all persons or entities relying thereon (other than the Owner of such Lot). The Association may establish and collect a reasonable charge for the issuance of such certificates.

Section 12. Effect of Nonpayment of Assessments; Remedies of Association.
(a) Any assessment (of whatever kind or character, whether a regular annual assessment, special assessment for capital improvements, or additional Lot assessment) not paid within ten (10) days of the due date thereof shall be delinquent. Any delinquent assessment shall bear interest from the due date thereof at the rate of eighteen percent (18%) per annum. All unpaid assessments, together with interest thereon as provided above, shall constitute a lien upon the Lot (together with all improvements thereon) against which the unpaid assessments were levied by the Association. To evidence such lien, the Association may, but is not required to, prepare and file for record in the office of the County Clerk of Jefferson County, Texas, a written notice, signed by an officer of the Association, setting forth the amount of the unpaid assessments, the name of the Lot Owner, and a description of the Lot upon which such assessments are unpaid.

(b) The Association may bring an action at law against the Lot Owner personally obligated to pay the same or foreclose the lien upon such Lot in the manner hereinafter provided. No Owner may exempt himself or otherwise escape liability for the assessments herein provided by abandoning his Lot or in any other manner. Suit to recover a money judgment against a defaulting Owner shall be maintainable without foreclosing or waiving the lien securing the assessments owing by such defaulting Owner.

(c) The assessment lien may be enforced by the Association by judicial proceedings or non-judicial proceedings (pursuant to the provisions of Section 13 below) to foreclose the lien on the defaulting Owner's Lot (including all improvements thereon) in like manner as a mortgage (with a power of sale) on real property upon the recording of a notice of lien, as provided in Subsection (a) above. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including (in the case of a non-judicial foreclosure) a trustee's fee equal to five percent (5%) of the gross sales proceeds, the costs of preparing and filing the notice of lien, and all other expenses of foreclosure, including reasonable attorney's fees. The Association shall have the power to bid on the Lot at foreclosure sale (whether judicial or non-judicial) and to acquire and hold, lease, mortgage or convey the same.

Section 13. Nonjudicial Foreclosure of Lien. To secure and enforce the payment of all assessments provided for in this Declaration, together with all interest accrued or accruing thereon and attorney's fees and other costs reasonably incurred by the Association in collecting the same, and for the auxiliary and cumulative enforcement of said lien, and in consideration of the sum of \$1.00 to Declarant in hand paid by the Trustee hereinafter named, and for the further consideration of the uses, purposes and trusts hereinafter set forth, Declarant has granted, sold, and conveyed, and by these presents does grant, sell, and convey unto Jeffrey T. Roebuck, Trustee, of Jefferson County, Texas, whose address is 2470 N. 11th Street Beaumont, Texas 77703, and any substitute or successor trustee appointed hereunder, each of the Lots in the Addition, to have and to hold the said Lots unto the said Trustee, and to his substitutes or successors forever. Declarant does hereby bind itself, its successors and assigns, to warrant and forever defend the Lots unto the said Trustee, his substitutes, successors and assigns forever, against the claim or claims of all persons claiming or to claim the same, or any part thereof, subject to any superior liens, for and upon the following trusts, terms, covenants, and agreements, to-wit:

(a) This conveyance, however, is made in trust to secure the payment of all assessments provided for in this Declaration (whether now owed or hereafter ever accruing to the Association). Should Declarant, its successors and assigns, make full payment of the assessments hereby secured as the same shall become due and payable, then this conveyance shall become null and void and of no further force and effect.

(b) In the event, however, of default in the payment of any assessment hereby secured, in accordance with the terms of this Declaration, it shall

thereupon, or at any time thereafter, be the duty of the Trustee or his successor or substitute, at the request of the Association (which request is hereby conclusively presumed), to enforce this trust against the Lot against which the assessment is due and owing in the manner provided in § 51.002 of the Texas Property Code, as then amended; and after giving notice and advertising the sale as provided in said § 51.002 (but without any other action than is required by said § 51.002 as then amended) and otherwise complying with that statute, the Trustee shall sell the Lot (including any improvements thereon) at public sale as provided in said § 51.002 and make due conveyance to the purchaser or purchasers thereof, with covenants of general warranty binding upon the then Owner of such Lot and such Owner's heirs, executors, administrators and successors.

(c) Out of the money arising from such sale, the Trustee acting shall first pay all expenses of advertising said sale and making the conveyance (including a Trustee's fee of 5% of the gross sales proceeds), and then to the Association the full amount of assessments owing, together with interest thereon, and reasonable attorney's fees, rendering the balance of the sale price, if any, to the Owner of said unit prior to such sale, his heirs or assigns, or to such other person as may be legally entitled thereto. The recitals in the conveyance to the purchaser or purchasers of such Lot shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner of such Lot prior to such sale, his heirs, executors, administrators, successors and assigns.

(d) It is agreed that in the event foreclosure should be commenced by the Trustee, or his substitute or successor, the Association, as beneficiary hereunder, may at any time before the sale of the Lot direct the abandonment of the sale and may then institute suit for the collection of the assessments, interest and collection costs then owing to the Association, and, at the election of the Association, for judicial foreclosure of the assessment lien. It is further agreed that if the Trustee should institute suit for collection and for judicial foreclosure of the assessment lien, the Association may, at any time prior to the entry of a final judgment in said suit, dismiss the same and require the Trustee, or his substitute or successor, to sell the Lot against which the assessment is then owing in accordance with the provisions of this Section 13.

(e) In case of the absence, resignation, death, inability, failure or refusal of the Trustee herein named or of any substitute trustee appointed hereunder to act, or in the event that the Association shall deem it desirable to remove without cause the Trustee or any substitute trustee and appoint another to execute this trust, then in any of such events, the Association shall have the

right and is hereby authorized and empowered to appoint a successor and substitute without any formality other than an appointment and designation in writing; and this appointment shall vest in him, as substitute or successor trustee, the estate and title in and to all said Lots, and he shall thereupon hold, possess, and execute all the rights, title, powers and duties herein conferred upon the Trustee named herein. The right to appoint a successor or substitute trustee shall exist as often and whenever from any of said causes any trustee, original or substitute, cannot or will not act, resigns, or has been removed without cause.

(f) The exercise or attempted exercise of the power of sale herein contained shall not exhaust the power of sale and shall not prevent any subsequent exercise thereof.

(g) The Association, as beneficiary hereunder, if it is the highest bidder, shall have the right to purchase at any sale of a Lot pursuant hereto and to have the amount for which such Lot is sold credited against the indebtedness then owing on such Lot to the Association.

(h) It is especially agreed that in the event of a foreclosure under the powers granted herein, the person in possession of the Lot sold shall thereupon become a tenant at will of the purchaser or purchasers at the foreclosure sale. Should such tenant then refuse to surrender possession of the Lot upon demand, the purchaser or purchasers shall be entitled to institute and maintain a statutory action for forcible detainer of said Lot in the justice of the peace court for the justice precinct in which the Lot is situated. The bringing of an action for forcible detainer shall not preclude the bringing of any other action for the possession of said Lot, and the bringing of one character of action shall not preclude the other and same may be exercised separately or simultaneously.

Section 14. Subordination of Assessment Lien to Mortgages. The assessment lien herein provided shall be and remain subordinate to the lien of any perfected First Mortgage. A "First Mortgage" is defined as a Mortgage which has first and paramount priority under law. A sale or transfer of a Lot shall not affect the lien thereon. However, the sale of a Lot pursuant to the foreclosure of a First Mortgage or any proceeding in lieu thereof shall extinguish the assessment lien as to unpaid charges which accrued prior to such foreclosure sale or transfer in lieu thereof. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due and payable or from the lien thereof. The holder of any First Mortgage shall be entitled, upon written request made to the Association, to written notification from the Association of any default by such holder's mortgagor (or grantor under a Deed of Trust or Trust Deed) in any obligation under this Declaration or the Bylaws of the Association which is not cured within sixty (60) days from the date upon which such default occurred. Any Mortgagee holding a First Mortgage on a Lot may pay any unpaid assessment payable with respect to such Lot, and upon such

payment such Mortgagee shall have a lien on such Lot for the amounts paid to the Association of the same rank as the lien of its Mortgage.

Section 15. Additional Lot Assessments. Separately and apart from the regular annual assessments and special assessments provided for above in this Article, the Board of Directors shall have the right to make a special assessment against any Lot Owner and his Lot for the costs incurred by the Association in:

(a) Making any repairs or replacements, or in performing any maintenance (other than lawn mowing or other lawn maintenance), which an Owner, although otherwise obligated to make or perform under this Declaration, fails to make or perform within thirty (30) days after the Association has given such Owner written notice specifying the repairs or replacements to be made or maintenance to be performed by the Owner;

(b) Performing any lawn mowing or maintenance which an Owner, although otherwise obligated to perform under this Declaration, fails to perform within three (3) days after the Association has given such Owner written notice specifying the lawn mowing or other lawn maintenance to be performed by the Owner; or

(c) Enforcing compliance by an Owner with any covenants, limitations, prohibitions or restrictions contained in this Declaration or the Bylaws of the Association or any rules or regulations adopted by the Association, where any such non-compliance continues for more than ten (10) days after the Association has given such Owner written notice specifying such non-compliance; plus an administrative charge equal to the greater of (i) twenty-five percent (25%) of the costs incurred by the Association in performing the obligations of the non-performing Owner or in enforcing compliance by the non-complying Owner, or (ii) the sum of \$25.00.

Section 16. Levy and Collection of Additional Lot Assessments. Any additional Lot assessment shall be fixed and levied by the Board of Directors of the Association, and written notice thereof shall be given to the owner of the Lot against which assessment is made. Such notice shall specify the nature and amount of the additional Lot assessment and the date upon which the same shall be due and payable (which due date shall be not less than 10 days from the date of such notice). Collection of any such additional Lot assessment shall be made in the same manner as the regular annual assessments provided for herein, and a lien therefor shall exist in favor of the Association upon the Lot (together with the improvements thereon) of the Owner against whom the assessment is made.

Section 17. Acceptance of Lot Subject to Lien. Each Owner, by acceptance of a deed to a Lot, (a) accepts such Lot subject to and encumbered with the assessment lien

(with power of sale) set forth above herein, (b) grants and confirms to the Association a contractual lien upon his Lot (together with all improvements thereon) to secure all assessments then or thereafter made against such Lot, and (c) expressly vests in the Association or its agents the right and power to bring all actions against such defaulting Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for foreclosure and enforcement of such lien, including, without limitation, non-judicial foreclosure pursuant to the provisions of Section 13 above.

Section 18. Books and Records. Proper books and records shall be kept by the Association with respect to all assessments made by the Association, and each Owner shall at all reasonable times have access to such books and records. The books and records shall be kept in such a manner as to separately identify the assessments and payments thereof on each Lot in the Addition. No payment made on any individual assessment account shall be transferred or credited to another account without the express written consent of the party making such payment.

ARTICLE VI

OWNER'S OBLIGATION TO REPAIR AND MAINTAIN

OBLIGATION TO REBUILD

Section 1. Owner's Obligation to Repair and Maintain Residence. Each owner, shall, at Owner's sole cost and expense, perform such repairs and maintenance as shall be required to keep Owner's residence in a condition comparable to the condition of such residence at the time of its initial construction, excepting only ordinary wear and tear. Additionally, each Owner shall maintain Owner's yard area and all sidewalks, and driveways on Owner's Lot. In the event an Owner shall fail or refuse to make such repairs or perform such maintenance, and such failure or refusal shall continue for more than forty-five (45) days from delivery of written notice from the Association to the Owner (or, if more than one (1) Owner, to any of them) specifying the maintenance or repairs required to be made, the Association may, at its election, cause such maintenance and repairs to be performed. The costs of making or performing such maintenance and repairs shall then be an additional assessment to which such Lot is subject and shall be due and payable to the Association in the month next following the delivery to the Owner (or, if more than one (i) Owner, to any of them) of a written itemized statement of costs of such maintenance and repairs. This assessment shall be secured by the same lien or liens and shall be enforceable in the same manner as any other assessment upon the Lot.

Section 2. Owner's Obligation to Rebuild. If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof with all due diligence, to rebuild, repair or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to such casualty. Reconstruction will be undertaken within three (3) months after the damage occurs and shall be completed within twelve (12) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. General Authority of Architectural Control Committee. No building, fence, wall, screening device, patio, patio enclosure, swimming pool, spa, tennis court, driveway, sidewalk, landscaping or other improvements (of whatever kind or description) shall be commenced, constructed, erected, placed or reconstructed on any Lot in the Addition; nor shall any exterior addition to or change or alteration of any structure or improvement on any Lot in the Addition be commenced or made; nor shall any exterior repainting or re-roofing involving any change in the exterior color scheme be commenced or performed; until two (2) complete sets of plans and specifications therefor (the "Plans") showing: (a) the kind, shape, size, height and exterior color scheme thereof; (b) the location of all improvements, including driveways, sidewalks and off-street parking; (c) utility installations; (d) the kind, nature and quality of materials; (e) finished grade, topography and elevation; and (f) site landscaping; have been submitted to and approved by the Architectural Control Committee (herein called the "Committee") as to: (1) the type and quality of materials; (2) the conformity of the planned improvements with the covenants contained in this Declaration; (3) the harmony of external design (including type, quality and color of roof, exterior materials and color scheme) with other existing or planned structures in the Addition; and (4) location of the planned improvements with respect to topography and in relation to other existing or planned structures in the Addition. The Plans shall also reflect all driveways and sidewalks serving the Lot, even though same may, in part, extend beyond the perimeter boundaries of the Lot. Plan approval or disapproval shall be as provided in Section 5 below. The Committee may, in its discretion, provide developmental guidelines for site planning, architecture, fencing and landscaping; and if and when such guidelines are provided, they shall be used as the basis for review and approval (or disapproval) of Plans.

Section 2. Composition of Committee. The Committee shall be composed of three (3) members. The initial members of the Committee are Charles C. Wade, James Abshire, and Mickey Beard. The Committee shall have the power to designate a representative (who may or may not be a member of the Committee) to act for the Committee; and upon the designation of such representative by the Committee, such representative shall have the power and authority to do any act or make any decision which the Committee itself could do or make under this Declaration. Neither the Committee nor

its authorized representative shall have the right to demand, charge or receive any fee or other compensation as a condition to the examination of any Plans submitted hereunder or for granting approval (or disapproval) thereof.

Section 3. Vacancies and Filing of Vacancies. In the event of the death or resignation of any of the members of the Committee, the remaining members of the Committee (even though less than a majority thereof) may appoint, by written instrument signed by such remaining member(s) and filed for record in the office of the County Clerk of Hardin County, Texas, a successor or successors to the Committee. If all the members of the Committee die or resign, then the Declarant (or its successor) shall have the authority to appoint successor members of the Committee; provided, however, if all members of the Committee die or resign, and the Declarant (or its successor) has not appointed successor members within ninety (90) days after the death or resignation of the last of the Committee members, then the Association, through its Board of Directors, shall exercise the authorities herein granted to the Committee. Furthermore, at any time after fifteen (15) years from the date of this Declaration, the Association, by written agreement executed by a majority of the Members of the Association and filed for record in the office of the County Clerk of Jefferson County, Texas, may (i) change the membership of the Committee; or (ii) withdraw powers and duties from, or restore powers and duties to, the Committee.

Section 4. Term of Committee; Surrender of Authority. The herein granted powers and duties of the Committee shall cease and terminate twenty (20) years after the date of this Declaration, and approval of the Committee shall not be thereafter required, unless, prior to the expiration of said twenty (20) year period, a majority of the Members of the Association shall exercise their right to restore to the Committee its powers and duties under this Declaration in the manner provided in Section 3 above.

Section 5. Manner of Approval. Plan approval or disapproval by the Committee, or its designated representative, as required in this Declaration, shall be in writing and signed by at least one (1) member of the Committee or by its designated representative (if a representative has been appointed to act for the Committee). If the Committee or its designated representative fails to give written approval or disapproval within thirty (30) days after Plans meeting the requirements of Section 1 of this Article VII have been submitted to it, approval will not be required, and the covenants contained in said Section 1 above shall be deemed to have been fully satisfied. However, the approval or disapproval of Plans by the Committee, or the failure of the Committee to approve or disapprove the Plans within thirty (30) days after the submission thereof, shall in no way authorize any use or improvement of any Lot in violation of any of the other covenants contained in this Declaration, except where the Committee had express authority to grant a waiver or variance from such covenant. Approval of Plans (whether actual or deemed) shall not be valid or effective for more than one hundred twenty (120) days; and if, within one hundred twenty (120) days from Plan approval, construction, reconstruction, addition, change or alteration for which Plan approval was obtained, has not commenced, then the Plans must

be resubmitted and approved by the Committee before any such construction, reconstruction, addition, change or alteration may be commenced.

There shall be no review of any action of the Committee, except by procedures for injunctive relief when such action is patently arbitrary and capricious; and under no circumstances shall the Committee, any member of the Committee, or the representative of the Committee be subject to any suit by anyone for damages for any actions, or failures to act, on the part of the Committee, any member of the Committee, or the Committee's representative.

Section 6. No Liability for Plan Approval. Neither the Committee, nor any member or representative thereof, shall be liable to any person or entity under any theory or under any circumstances in connection with the Committee's approval (whether actual or deemed) of any Plans submitted to the Committee for approval, including, without limitation, any liability based upon the soundness of construction or adequacy of plans and specifications, mistake of judgment, negligence or nonfeasance.

Neither the Committee, nor any member or representative thereof, shall have any liability to any person or entity by reason of the construction of buildings or the making of other improvements which shall depart from or be at variance with the approved Plans.

ARTICLE VIII

MAINTENANCE BY ASSOCIATION

Section 1. Maintenance of Common Area. It shall be the duty and obligation of the Association to (i) maintain and repair the Common Area of the Addition, together with all structures and improvements thereon; (ii) maintain and repair all water, sewer, storm drainage and other utility lines in or serving the Common Area (which are not dedicated to general public use); (iii) maintain and repair streets situated on the Common Area within the Addition; and (iv) maintain the perimeter fence and the exterior side of the shrubbery along the perimeter fence.

ARTICLE IX

USE RESTRICTIONS

Unless otherwise noted, the use restrictions apply to all lots in the Addition.

Section 1. Single Family Residential Use. No Lot or building site in the Addition shall be used for any purpose except for single family residential purposes. As used in this Declaration, the term "family" shall have the same meaning as set forth in the City of Lumberton's Zoning Ordinance. However, temporary construction and sales offices may be placed or constructed on specific Lots in the Addition with the prior written approval of

the Committee, and provided further that any such office shall be removed not later than the date specified in the Committee's written approval.

Section 2. Permitted Structures. No structure shall be erected on any Lot other than one (1) detached single-family dwelling not to exceed two and one-half (2 ½) stories in height and a private garage for not more than four (4) cars, and such other accessory buildings as are incidental to single-family residential use and are not inconsistent with the other restrictive covenants set forth and contained in this Declaration, if the Plans for such accessory buildings are submitted to and approved by the Committee in the manner provided above herein.

Section 3. Construction in Accordance with Plans. All buildings and other improvements shall be constructed or made strictly in accordance with the Plans submitted to and approved by the Committee or its representative, or in strict accordance with Plans submitted to the Committee, but for which no approval is required by reason of the failure of the Committee or its representative to approve or disapprove the same within thirty (30) days after the submission thereof, as provided in Section 5 of Article VII above.

Section 4. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors.

Section 5. Insurance. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors. No Owners shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

Section 6. Nuisances. No noxious or offensive activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners.

Section 7. Signs. No sign of any kind shall be displayed to public view on any Lot or building except one (1) sign of not more than 8 square feet in area advertising the merits of the property for sale or rent. During the construction and initial sales period of the dwelling units the Builder may use other signs and displays to advertise the merits of the property for sale or rent.

Section 8. Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, mobile home, manufactured home, barn or other out buildings shall be used on any Lot at any time as a residence either temporary or permanently; nor shall any used residence or other used structure be moved onto any Lot during the construction and sales period of the initial dwelling units. The Builder may erect and maintain such structures as is customary in connection with such construction and sale of such property,

including, but without limitation, storage areas, construction yards, signs, model units and sales offices.

Section 9. Oil and Mining Operation. No gas or oil drilling, gas or oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot by the Declarant or any subsequent owners deriving title to the property herein.

Section 10. Livestock, Poultry, and Household Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot in the Addition, except that dogs, cats or other household pets, not to exceed two (2) in number for any residence, may be kept provided (i) they are not kept, bred or maintained for any commercial or breeding purpose, (ii) they do not become a nuisance, and (iii) they are not allowed to roam or wander unattended in the Addition.

Section 11. Garbage and Refuse Disposal. No Lot or any part of the Common Area shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall be kept screened by adequate planting or fencing so as to conceal them from public view. There is reserved in favor of the Association the determination of the method of garbage disposal, that is, whether it shall be through public authority or through private garbage disposal of such materials shall be kept in clean and sanitary condition.

Section 12. Sewage Treatment. No sewage treatment system shall be permitted on any Lot.

Section 13. Owner's Maintenance. The Owner shall maintain and keep in repair the following equipment and lines located outside the residence: air conditioning compressor, condenser, including pipes and electrical lines connecting same to the residence, sanitary sewer line connecting the residence to the sanitary sewer collection system, electric power service conductors from the exterior of the building to the point of connecting to the electric utility company's junction box or transformer, electric circuit breakers, and portion of natural gas and/or telephone service lines located on the Lot but not maintained by the gas and/or telephone companies.

An Owner shall do no act or any work that will impair the structural soundness or integrity of another residence or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other residences or their Owners.

All owners shall maintain their yards on their property in a neat, clean and orderly fashion.

Section 14. Annoyance. No activity shall be carried on upon any Lot or Common Area which might reasonably be considered as giving annoyance to neighbors or ordinary

sensibilities and which might be calculated to reduce the desirability of the Addition as a residential neighborhood, even though such activity be in the nature of a hobby and not carried on for profit.

Section 15. Minimum Square Footage Requirements.

A. Block 1, Lots 4, 5, 6, 7, 8, 9, 10, 11, and 12. No one story or split level dwelling shall be permitted in which the living floor area of the main structure (including enclosed utility and storage rooms, but excluding open porches, carports and garages) shall be less than two thousand (2000) square feet, except for lot Number 12, which can be no less than eighteen hundred and fifty (1850) square feet because of the small size of the lot; nor shall the first floor of any two story or story and one-half dwelling on any Lot have less than fifteen hundred (1,500) square feet of such living area or a total of such living area of less than two thousand (2000) square feet.

B. Block 5, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9; Block 6, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9. No one story or split level dwelling shall be permitted in which the living floor area of the main structure (including enclosed utility and storage rooms, but excluding open porches, carports and garages) shall be less than fourteen hundred (1400) square feet; nor shall the first floor of any two story or story and one-half dwelling on any Lot have less than one thousand (1000) square feet of such living area or a total of such living area of less than fourteen hundred (1400) square feet.

Section 16. Exterior Construction Materials. Any dwelling and all structures appurtenant thereto constructed on any Lot in the Addition shall have the exterior thereof constructed of no less than 80% stone or brick veneer, stucco, or other masonry material. This requirement may be waived by the Architectural Control Committee, or by its duly authorized representative, provided such committee or representative shall expressly approve (in advance of commencement of construction) the substitution of other exterior construction materials which shall, in the sole opinion of the Committee or its representative, not detract from or adversely affect the harmony of external design or appearance of the subject structure or other structures in the Addition.

Section 17. Minimum Set Back Lines.

No dwelling structure, including attached or detached garage or other accessory building, shall be located nearer to the front Lot line or nearer to a side Lot line than the building set back line shown on the recorded plat or plats of the Addition. No dwelling structure, including any attached or detached garage or other accessory building, shall be located nearer than twenty-five feet (25') to the rear line of any Lot. The Committee shall determine in which direction a dwelling shall face on a Lot.

Section 18. Minimum Interior Line Setback.

A. Block 1, Lots 4, 5, 6, 7, 8, 9, 10, 11, and 12. No one-story dwelling shall be located nearer than seven and one-half feet (7 ½) to any interior Lot line; and no one and one-half story, two-story, or two and one-half story dwelling be located on any Lot nearer than seven and one-half feet (7 ½) to any interior Lot line. An unattached garage or other accessory building permitted hereunder may be located not nearer than two and one-half feet (2.5') from an interior Lot line and not nearer than two and one-half feet (2.5') to the rear Lot line, provided that such garage or accessory is attached only by a breeze way or skywalk.

B. Block 5, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9; Block 6, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9. Zero Lot Line. The dwellings in these blocks shall be built directly on the Lot line on one side of the lot. However, the dwelling shall not be located nearer than 10 feet to the opposite lot line. All dwellings on these lots shall be positioned to maintain a distance of ten feet (10) between the dwellings.

Section 19. Garage and Outbuilding.

Block 1, Lots 4, 5, 6, 7, 8, 9, 10, 11, and 12. Garages are not required to be detached but, if the garage is detached it shall be built in the back of the primary residence, and must be at least 60 feet back from the front property line of that lot. Garages may be as close as two and one-half (2 ½) feet from side lot lines providing that it does not encroach on an easement. No basketball or other types of goals may be placed within 60 feet of the front property line of a lot.

Lots that are at least 90 feet in width shall have either a detached garage complying with the restrictions outlined above or the garage shall not face the street in front of the residence.

Any garage constructed on Lot 4, Block 1, that is built on the east side of the lot and has an entrance from River Birch Circle, must have a dormer above the garage facing River Birch Circle, and the plans for the garage must be approved by the Architectural Control Committee.

The placement and construction of any other shop or outbuilding must be approved by the Architectural Control Committee.

Section 20. Antennas. No antenna or other device for the transmission or reception of "ham radio", citizen's band or short wave radio signals be permitted on any Lot. Except as provided below in this Section, no antenna of any type, including, but not limited to, a dish-type satellite signal receiver, shall be erected on any Lot until Plans for the installation and location of such antenna have been submitted to and approved by the Committee in the same manner as for the construction of a residence and other improvements on a Lot. Without the prior submission to and approval by the Committee of Plans for its installation and location, a dish-type satellite signal receiver not exceeding twenty-four inches (24") in

diameter may be installed on a dwelling or other structure on a Lot, provided that it is installed at the rear of the dwelling or other structure and is not visible from the street located in front or at the side of a Lot. Except as provided in the preceding sentence of this Section, the Committee, in its absolute discretion, shall have the right to absolutely refuse the approval of the placement of any such dish-type receiver on any Lot in the Addition.

Section 21. Sidewalks. Prior to the first occupancy of a dwelling constructed on any Lot in the Addition, there must be constructed and completed (in accordance with the "sidewalk Construction Guidelines" promulgated by the Committee) a sidewalk along each street-side Lot line. The required sidewalk(s) shall be constructed of reinforced concrete, with a minimum thickness of four inches (4") and with expansion joints spaced at intervals of not more than four feet (4') each, and shall be located four feet (4') from the curb line of each street abutting the Lot.

Section 22. Fences, Walls, Etc. (a) All properties will be fenced to a height of eight (8) feet. All fences shall be made of wood unless otherwise approved by Architectural Control Committee. The location and construction plans for fences shall be submitted to the Architectural Control Committee. The fence designs and locations must be approved by the Architectural Control Committee at their sole discretion.

(b) No fence, wall, hedge, structure or other improvements (including, without limitation, a swimming pool, tennis court or other recreational facility) shall be constructed, erected, placed, altered or permitted on any Lot except as approved by the Committee in accordance with the earlier provisions of this Declaration. No privacy fence or like screening device shall be located nearer to the front Lot line than the front of the dwelling, nor, if on a corner Lot, shall any privacy fence or like screening device be located nearer to the street-side Lot line than the side of the dwelling. No hedge, tree or other planting shall be permitted on any corner Lot which obstructs lines of sight at elevations of between two feet (2') and six feet (6') above the adjacent private drives within the triangular area formed by the street-side property lines of the Lot and a line connecting them at points twenty-five feet (25') from the intersection of the street-side property lines of such Lot. No tree shall be permitted to remain within such triangular area unless the foliage line is maintained at sufficient height to prevent obstruction of such lines of sight.

(c) Fences and Gates are required between dwellings on Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, of Block 5, and Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, of Block 6, and are to be constructed in a manner and with materials consistent with the construction of the dwelling. The location and design of the fences and Gates must be approved by the Architectural Control Committee at their sole discretion.

Section 23. Gates in the Perimeter Fence. No gates shall be allowed in the perimeter fence. However, the Architectural Control committee may waive this requirement for specific lots.

Section 24. Chimneys. If any metal chimney is used in the construction or remodeling of any residence in the Addition, it shall be encased in wood, brick or other material approved by the Committee in the same manner as any other exterior building materials.

Section 25. Minimum Ceiling Heights; Permitted Roofing Materials. Any dwelling constructed on a Lot in the Addition must have a first-floor ceiling height of not less than nine feet (9'), and the upper floor of any story and one-half or two-story dwelling must have a ceiling height of not less than eight feet (8'). Only architectural grade composition shingles or comparable roofing materials approved by the Committee may be used on any dwelling or other structure constructed on any Lot in the Addition.

Section 26. Elevation. It is recommended that tops of slabs be no less than 12 inches above tops of street curbs.

Section 27. Garage Sales. No Owner shall conduct any sales on any lot in the nature of a garage sale or the like. What constitutes a Garage sale or the like within the meaning of this prohibition shall be determined by the Architectural Control Committee.

Section 28. Driveway Construction. Curb cuts from the subdivision streets cannot exceed twenty feet (20') in width, and all driveways within twelve feet (12') of the curb cannot exceed eighteen feet (18') in width; provided further, with respect to circular driveways in front of the dwelling, that portion of the driveway which is parallel to the subdivision street may have a width not to exceed twenty feet (20'). Location of driveway and garages of all lots must be approved by the Architectural Control Committee.

Section 29. Yards. (a) Each shall expend not less than \$2,000.00 for plants in front of homes. All front yards (and all yards which can be seen from the street or not enclosed by privacy fencing) of all dwellings must be solid sodded and landscaped in a manner having the prior approval of the Architectural Control Committee before the dwelling is occupied as a residence. Any builder constructing any improvements upon any Lot will be personally liable to complete and pay for such sodding and landscaping. No exterior Christmas lights or decoration will be erected or displayed on any lot between February 1 and October 31 in a year. Whether exterior lights and decorations constitute Christmas lights or decorations within the meaning of this provision will be determined in the sole judgment of the Architectural Control Committee.

(b) Any owner of any lot must, prior to construction, maintain the lot, mowing all cleared areas. Should any owner fail to maintain his lot, the Home Owner's Association reserves the right to mow and maintain said lot, the cost of which will be billed by the Association to the owner, and if unpaid, the sum will be deemed a Lien and will be considered an assessment against the property and if unpaid, shall be subject to Article 5, Section 8 and 9 hereof.

(c) Prior to the occupancy of a residence constructed on any Lot in the Addition and at all times thereafter, there must be at least two (2) living River Birch Trees in the front yard. Each tree shall be an existing tree or newly planted tree at least six feet (6') in height.

(d) All landscaping (including the planting of yard trees) must be approved by the Architectural Control Committee. If landscaping is not approved prior to installation, the Architectural Control Committee can require that it be removed.

Section 30. Drainage. No building will be constructed in such a manner as to allow direct drainage from the roof or any part capable of collecting precipitation onto any property in the Addition (including but not limited to streets dedicated herein) other than the lot on which said building is located. All lots must drain to the Street in the front of the lot.

Section 31. Windows. Dwellings built on Block 5, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9; Block 6, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, shall be constructed with a garden/yard area of at least ten feet (10') in width on one side of the dwelling. In order to maintain privacy, the wall of the adjacent dwelling overlooking the garden/yard area, shall not be constructed with windows lower than six feet (6') off of the ground unless the windows are made of an opaque material such as glass blocks, which does not allow for a clear view into the garden/yard of the adjacent lot. The location and construction of these windows must be approved by the Architectural committee.

Section 32. Multiple Lots; No Construction on Less Than a Platted Lot. No dwelling shall be constructed on a building site consisting of less than one (1) platted Lot. Nothing contained herein shall prohibit the construction of a dwelling on a building site consisting of more than one (1) full platted Lot, such as a building site consisting of two (2) platted Lots or one (1) platted Lot and a portion of an adjacent platted Lot, provided that, in the case of a "lot split" any replatting required by the City of Lumberton Subdivision Regulations is accomplished prior to commencement of construction on the composite building site. Any such composite site, if same meets all of the foregoing requirements, shall be deemed to constitute a "Lot" under the terms and provisions of this Declaration. However, no more than 2 lots may be combined and used for one single family residence. If 2 lots are combined for one single family residence, the lots must be side-by-side and cannot be front to back. Block 5, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, and Block 6, Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, cannot be combined or used as one residence, and one residence may not be built on two lots.

Section 33. Parking or Storage of Boats, Etc. No boats, trailers, campers, buses, mobile homes, recreational vehicles, trucks (except for pickup trucks or vans having a manufacturer's rated carrying capacity of not more than one [1] ton), or similar vehicles (any of the foregoing being herein referred to as a "Restricted Vehicle") may be parked or stored upon any Lot in the Addition on a Permanent Basis (as that term is defined below in this Section) except wholly within an enclosed garage or other fully enclosed accessory building; nor may any Restricted Vehicle be parked or allowed to remain on a Permanent

Basis on any street in the Addition. Further, no Restricted Vehicle shall be parked or left unattended on any portion of the Common Area of the Addition, whether or not on a Permanent Basis. A "Permanent Basis", as that term is used herein, shall mean any period or periods in excess of twenty-four (24) consecutive hours, or periods in excess of eight (8) consecutive hours on three (3) or more successive days. No commercial trucks, vans, tractor-trailers or trailers (any of the foregoing being herein referred to as a "Commercial Vehicle") shall be parked or left unattended on any Lot or in street in the Addition, except for the limited time period(s) during which the owner or operator of the Commercial Vehicle is (a) making deliveries to the Declarant, the Association or a Lot Owner (or to their respective employees, agents, representatives or contractors), or (b) performing maintenance, repairs or construction on a Lot or the Common Area for the Declarant, the Association or a Lot Owner (or for their respective employees, agents, representatives or contractors); nor shall any Commercial Vehicle be parked or left unattended for any period of time on any portion of the Common Area. As used in this Section, the term "commercial trucks, vans, tractor-trailers or trailers" means any truck or van having a manufacturer's rated carrying capacity of more than one (1) ton, truck-tractor, tractor-trailer or trailer that is owned, leased or operated for commercial purposes and bears some indicia (whether by way of a sign, logo, color scheme or distinctive markings) that it is owned, leased or operated for commercial purposes, including any such vehicle that is owned, leased to or operated by the Owner of a Lot in the Addition.

Further, no boat, trailer, truck, automobile, camping or recreational vehicle, or any other vehicle may be parked upon the street overnight. No repair work, dismantling or assembling of motor vehicles or any other machinery or equipment shall be permitted in any street, drive, driveway or yard.

Section 34. Conflict Between Ordinances and Restrictions. In the event of any conflict between the restrictions contained in this Declaration and any ordinances, laws, rules or regulations of municipal or other governmental authorities having jurisdiction over the Addition or the construction of improvements therein, then such ordinances, laws, rules and regulations shall control; except, however, that if the restrictions contained herein are in any respect more restrictive than such ordinances, laws, rules or regulations, then the restrictions contained herein shall control.

Section 35. Utility Service and Meters; Mechanical Equipment Screening. All utility service lines between meter points and dedicated utility easements shall be underground. Meters for utilities shall not be visible from any private drive in the Addition. Air conditioning compressors and other external mechanical equipment must be screened from view from the private drives in the Addition in a manner acceptable to the Committee.

ARTICLE X

EASEMENTS

Section 1. Blanket Easements. An easement over and upon every Lot and all of the Common Area of the Addition is hereby granted to all police, fire protection, ambulance, garbage and trash collection vehicles and personnel to enter thereon in the performance of their duties. Further, a like easements is herewith granted to the Association, its representatives, agents and employees, to enter in and upon to cross any Lot and the Common Area of the Addition for the purpose of performing the duties of maintenance and repair herein provided.

Section 2. Other Easements. (a) Easements for installation and maintenance of utilities and drainage facilities are shown and designated as such on the recorded subdivision Plat and are hereby dedicated to public use by Declarant. Within the utility or drainage easements, no structures, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easement.

(b) No dwelling unit or other structure of any kind (except as hereinafter provided) shall be built, erected or maintained on any such easement, reservation or right-of-way, and any such easement reservations and rights-of-way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarant, its agents, employees and contractors, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under and above such locations to carry out any of the purposes for which such easements, reservations and rights-of-way are reserved. Easements for underground utilities may be crossed by walkways and driveways, provided that there are prior arrangements made for such crossings with the utility company or municipal agency furnishing service therein, and provided further that Declarant or any utility company or municipal agency furnishing service therein or using the easement shall not be liable for any damage done by them, their agents, employees, or contractors to such walkways and driveways in the course of installing, maintaining or removing utility lines and appurtenances thereto within such easements.

Section 3. Blanket Utility Easement. There is hereby reserved upon each Lot in the Addition a blanket fifteen foot (15') wide utility easement in favor of any franchised public electric utility company for the purpose of installing, operating and maintaining electric utility service to the residence constructed on that Lot.

Section 4. Additional Rights of Declarant. Declarant shall have the right to place, erect, construct, maintain and utilize (either for itself or its authorized agents and brokers) a "sales" office on the "Common Lot" shown and reflected on the Plat of the Addition or elsewhere on the Common Area of the Addition, or on any Lot in the Addition during the period of Declarant's ownership of such Lot, as may be determined, from time to time, by the Declarant in its sole discretion. The right reserved by Declarant in this Section shall be

in addition to the right to use, with the prior consent of the Architectural Control Committee, Lots in the Addition for "sales" and "construction" offices, as provided in Section 1 of Article IX of this Declaration.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. In the event of any violation or breach, or attempted violation or breach, of any of the terms or provisions of this Declaration, Declarant, the Association or any Lot Owner shall be authorized to enforce the terms, covenants and restrictions hereof by any proceedings at law or in equity against the person(s) violating or breaching, or attempting to violate or breach, the same, including actions for prohibitive or mandatory injunctive relief; and it shall not be a prerequisite to the granting of any such injunctive relief that there be any showing that irreparable damage or harm will result if such injunctive relief is not granted. Additionally, any person or entity entitled to enforce the terms, covenants or restrictions of this Declaration may recover such damages, both actual and punitive, as such party may show that he or it is entitled by reason of any such violation or breach. In any action for enforcement of the terms, covenants or restrictions hereof, whether for injunctive relief or damages, if the party prosecuting such action is successful, he or it shall be entitled to recover, in addition to any damages awarded, reasonable attorney's fees and all costs of court.

Section 2. Forbearance Not a Waiver. The forbearance of enforcement of any restriction herein contained for any violation or proposed or attempted violation of any restriction herein contained shall not constitute a waiver of the right of Declarant, the Association or any Owner to thereafter enforce such restriction is to any subsequent violation or proposed or attempted violation.

Section 3. Time for Enforcement. Any action for enforcement the restrictions or other covenants contained herein shall be commenced within one (1) year after such violation, or attempted violation, began or first occurred, and not thereafter. The term "action" shall include any activity taken in furtherance of the enforcement of the restrictions or other covenants.

Section 4. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 5. Term of Covenants. The covenants and restrictions contained in this Declaration shall be binding for a period of twenty (20) years from the date of this Declaration, upon the expiration of such twenty (20) year period, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each.

Section 6. Amendment or Termination of Covenants. This Declaration may be amended, or the covenants and restrictions herein contained may be terminated, in whole or in part as follows:

(a) During the initial twenty (20) year period, any such amendment or termination shall be effected only by a written instrument signed by the Owners of not less than eighty percent (80%) of the Lots in the Addition and duly recorded in the office of the County Clerk of Jefferson County, Texas.

(b) At any time after the initial twenty (20) year period, any such amendment or termination shall be effected only by a written instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots in the Addition and duly recorded in the office of the County Clerk of Jefferson County, Texas.

For the purposes of calculating the foregoing respective percentages of Lots in the Addition, there shall be taken into account not only the Lots in River Birch Place Phase I, but also any additional Lots brought within the scheme of this Declaration and within the jurisdiction of the Association pursuant to the provisions of Article II of this Declaration.

IN WITNESS WHEREOF, Declarant, Joan Abshire, has executed this Declaration on the 9th day of February, 2006.

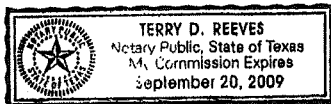
BIRCH PLACE ONE, LTD.

By: Joan Abshire
Joan Abshire
President of General Partner, Birch Place Development, LLC

THE STATE OF TEXAS §
COUNTY OF JEFFERSON §

BEFORE ME, the undersigned authority, on this day personally appeared JOAN ABSHIRE, President of Birch Place Development, LLC, General Partner of Birch Place One, LTD, a Texas Limited Liability Partnership, in the capacity therein stated, known to me through his Texas Driver's License, 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 9th day of February, 2006.



Terry D. Reeves
Notary Public, State of Texas

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Joan Abshire

STATE OF TEXAS COUNTY OF HARDIN
I hereby certify that this instrument was filed on the date and time stamped hereby by me and was duly recorded in the Official Public Records of Hardin County Texas on

FEB 16 2006



Glenda Alston
COUNTY CLERK,
HARDIN CO., TEXAS