



**Declaration of Covenants, Conditions
And Restrictions for Pecan Creek,
An Unrecorded Subdivision.**

Fourth Amendment and Restatement

Adopted January 23, 2005

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
PECAN CREEK , AN UNRECORDED SUBDIVISION**

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**FOURTH AMENDMENT AND RESTATEMENT OF
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
PECAN CREEK
AN UNRECORDED SUBDIVISION**

THIS FOURTH AMENDMENT AND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of the date hereinafter set forth.

WITNESSETH:

WHEREAS, Pecan Creek is an unrecorded subdivision composed of 170.75 acres of land located in Fort Bend County, Texas, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes ("Pecan Creek") or ("Subdivision"), which land was purchased in 1968 and developed by Gary Greene, Trustee ("Greene"); and

WHEREAS, Greene, among other actions evidencing an intent to restrict the property, prepared certain restrictive covenants for the Subdivision ("Restrictive Covenants"), and marketed the Subdivision as restricted by the Restrictive Covenants, but failed to file a record of the Restrictive Covenants and failed to consistently attach the Restrictive Covenants to deeds to purchasers until the Restrictive Covenants were filed of record in Volume 640, Page 346 of the Deed Records of Fort Bend County;

WHEREAS, by written instrument filed of record under County Clerk's file number 9511155 on March 1, 1995 (the "Second Amendment"), a majority of property owners in the Subdivision amended the Restrictive Covenants;

WHEREAS, a dispute arose among certain property owners in the Subdivision as to the validity of the Restrictive Covenants and the Second Amendment, as more fully set out in that certain lawsuit identified as Cause No. 91,192 in the 268th District Court, Fort Bend County, Texas, styled PECAN CREEK SUBDIVISION COMMITTEE, ET AL vs GERALDINE ABB, ET AL (the "Litigation"); and

WHEREAS, the Litigation was resolved by the parties according to the terms of that certain Settlement Agreement dated May 21, 1998, pursuant to which a Third Amendment to the Restrictive Covenants (the "Third Amendment") has heretofore been filed of record in the Official Records of Real Property of Fort Bend County, Texas, and pursuant to the terms of which Settlement Agreement this Restatement is also filed in the Official Records of Real Property of Fort Bend County, Texas, which Settlement Agreement authorizes the New Restrictions Committee, as defined therein, to present this Declaration to the property owners and upon approval of a simple majority vote at a meeting or by circulation subsequent to the execution of the Settlement Agreement to record this Declaration in the Official Records of Real Property of Fort Bend County, Texas, for the purposes herein stated; and

WHEREAS, the Board of Directors has presented this Declaration to the property owners and by a simple majority vote of the property owners at a meeting held on January 23, 2005 received written approval, and the Board of Directors (hereinafter referred to as "Declarant"), intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvements for the benefit of all owners of the property within the Subdivision and the undersigned desires to provide a flexible and reasonable procedure for the overall development of such property and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such property.

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

ARTICLE I DEFINITIONS

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

SECTION 1. "Architectural Review Committee" or "ARC" refers to the committee created pursuant to Section 2 of Article VI hereof for the purpose of reviewing plans and specifications for the construction of proposed improvements or the alteration of existing improvements on the Lots within the Subdivision as set forth in Article VI hereof.

SECTION 2. "Articles of Incorporation" shall mean the Articles of Incorporation of the Pecan Creek Homeowners Association, Inc. and any amendments thereto, as filed with the Secretary of State of the State of Texas.

SECTION 3. "Assessment" shall mean the annual assessments levied by the Association for purposes of obtaining funds to pay Association Expenses as provided herein, special assessments, and/or any other amounts or sums due by any Member to the Association pursuant to the provisions of this Declaration.

SECTION 4. "Association" shall mean Pecan Creek Homeowners Association, Inc., a non-profit, non-stock, membership corporation incorporated under the laws of the State of Texas by the Board of Directors or its designee, its successors and assigns.

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

SECTION 6. "Board of Directors" or "Board" shall mean the governing body of the Association whose members shall be elected by the membership.

SECTION 7. "Builder" shall mean and refer to any Person who acquires a Lot for the purpose of constructing and selling a Single Family Residence.

SECTION 8. "By-Laws" shall mean the By-Laws of the Association, as amended from time to time.

SECTION 9. "Common Areas" shall mean all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment or benefit of the Owners and Occupants, together with those areas, if any, which by contract or agreement become the responsibility of the Association. Road rights-of-ways and easement areas within or adjacent to the Subdivision may, at the discretion of the Board of Directors, be part of the Common Area.

SECTION 10. "Construction Guidelines" shall mean and refer to certain standards and requirements for the construction of improvements proposed by the Board of Directors which must be complied with by an Owner in order to obtain approval of the plans and specifications for proposed improvements on a Lot in the Subdivision as required by this Declaration. The Construction Guidelines will contain provisions applicable to all of the Lots within the Subdivision.

SECTION 11. "Declarant" shall mean and refer to the Board of Directors of Pecan Creek Homeowners Association Inc. and thereafter to the incorporated Association, and to its successors and assigns, provided that in the case of an assign in an instrument of conveyance or by a separate written instrument placed of record in the real property records of Fort Bend County, Texas, such assign is designated as the "Declarant" by the Declarant hereunder at such time. Upon such designation of an assign as a successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease.

SECTION 12. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Pecan Creek Subdivision as it may hereafter be amended.

SECTION 13. "This Section Intentionally Left Blank."

SECTION 14. "Lot" shall mean any of the numbered lots shown on the plat of the Subdivision, or the replatting of a Lot; provided, however, no Lot created by the replatting of a Lot may contain less than two (2) acres. The Owner of two (2) adjacent Lots shall have the right to consolidate such Lots into a single Lot either by replatting such Lots or by constructing a Single Family Residence across the common line of such Lots. Upon any such replatting or the construction of a Single Family Residence across the common Lot line, the former Lot shall thereafter be considered as a single Lot for all purposes of this Declaration. The term "Lots" shall mean and refer to each Lot and all of them.

SECTION 15. "Member" shall mean a Person entitled to membership in the Association, as provided herein.

SECTION 16. "Member In Good Standing" shall mean any Member who has no outstanding financial obligation to the Association for any annual assessments, special assessments, or other fees, as provided for herein or who has made suitable arrangements with the Board of Directors.

SECTION 17. "Mortgage" shall mean a deed of trust, mortgage or other similar security instrument granting, creating, or conveying a lien or security interest upon a Lot.

SECTION 18. "Mortgagee" shall mean a beneficiary or holder of a Mortgage.

SECTION 19. "Occupant" shall mean any person occupying all or any portion of a Single Family Residence within the Subdivision for any period of time, regardless of whether such person is a tenant of the Owner of such property.

SECTION 20. "Owner" shall mean the record owner, whether one or more Persons of the fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation or those owning an interest in the mineral estate.

SECTION 21. "Person" shall mean any natural person, corporation, joint venture, partnership, association, trust or other legal entity.

SECTION 22. "Single Family Residence" shall mean a detached residence constructed on a single Lot. For purposes of these restrictive covenants, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit, or no more than two (2) persons who are not so related and the children of either of such individuals living together as a single household unit, and the household employees of either such household unit. It is not the intent of the Declarant to exclude from a Single Family Residence any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted as restrictively as possible to preserve as much of the original section as allowed by law.

SECTION 23. "Street" shall mean any street, boulevard, road, alley, lane, avenue, or thoroughfare within or adjacent to the Subdivision.

SECTION 24. "Subdivision" shall mean Pecan Creek, an unrecorded subdivision comprised of 170.75 acres of land in Fort Bend County, Texas. A description of the real property included in the Subdivision is set forth in Exhibit A attached hereto.

ARTICLE II

PECAN CREEK HOMEOWNERS ASSOCIATION, INC.

SECTION 1. ORGANIZATION. The Association has been formed as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure, and management of the maintenance funds, enforcement of the restrictions contained herein, providing for the maintenance and preservation of the Common Area and the facilities of the Association, and architectural control of the Lots. The Association shall be governed by the By-Laws, which shall not be inconsistent with this Declaration.

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

SECTION 3. VOTING. Members shall be all Owners. Members In Good Standing shall be entitled to one (1) vote for each Lot of which they are the Owner. In any situation where more than one Person holds the interest in a Lot required for membership in the Association, the vote for such Lot shall be exercised as those Persons among themselves determine and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote for such Lot shall be void in the event more than one Person seeks to exercise it. If a Member owns two (2) or more Lots which are contiguous, the Member may choose the option to consolidate those Lots FOR THE PURPOSE OF VOTING, into one (1) Lot for one (1) vote. This consolidation must be exercised prior to the month of January 2005. New Members may exercise this option to consolidate during January of the first full year of Membership.

SECTION 4. BOARD OF DIRECTORS. The Board of Directors of the Association shall be comprised of persons who are Owners or designated representatives of Owners. The number of Directors shall be not fewer than four, but the number may be increased according to the terms of the By-Laws; provided, however, that the Board shall consist of an equal number of persons who are Owners or representatives of Owners of property in the Subdivision lying North of Jones Creek and Owners lying South of Jones Creek.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1 PURPOSE OF ASSESSMENTS. The annual assessment provided for in this Declaration shall be used by the Association to maintain and keep in good repair the Common Area and for the general purposes of promoting the common benefit of the Owners and Occupants in the Subdivision. The judgment of the Board of Directors as to the expenditure of assessments shall be final and conclusive.

- (a) Assessments obtained by the Association may be used to fund without limitation all or any of the following:
- 1) Operation, mowing, maintenance, repair, and improvement of the Common Area, including fences, entryways, road esplanades and cul de sacs and easements within or adjacent to the Subdivision
 - 2) Payment of taxes and premiums for insurance coverage in connection with the Common Area and for directors and officers liability insurance
 - 3) Paying the cost of labor, equipment (including expense of leasing any equipment), material, and any associated management or supervisory services and fees
 - 4) Purchasing, installing, maintaining or replacing landscaping in the Common Area
 - 5) Designing, purchasing and installing any improvements to the Common Area
 - 6) Removing debris from the Common Area

- 7) Contracting for the installation and maintenance of main entrance lights and paying the costs of electricity for such lights
- 8) Collecting and disposing of trash, garbage, rubbish and other similar materials if the Association decides to provide such service to the Subdivision
- 9) Payment of legal fees and expenses incurred to collect assessments and enforce this Declaration
- 10) Contracting for insect and pest control such as mosquito fogging
- 11) Carrying out such purposes of the Association as commonly benefit the Members of the Association

(b) Assessments may not be used to maintain a drainage easement or correct a drainage problem on any Lot, unless such Assessments are Special Assessments approved for such purpose as provided by Section 3 of this Article

SECTION 2. TYPES OF ASSESSMENTS. Each Owner by acceptance of a deed to any Lot in the Subdivision, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association annual assessments as specified in this Section 2 and special assessments as specified in Section 3 of this Article III.

- (a) **Annual Assessments.** Annual assessments shall be levied by the Board on the Lots to enable it to pay the Association Expenses. The initial annual assessment shall commence on the date that the first Lot in the Subdivision is conveyed by the Declarant or on such later date as the Board determines. If such assessment commences on a date other than January 1, such assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, annual assessments shall be levied for each calendar year in advance.
- (b) **Maximum Annual Assessment.** The annual assessment shall be \$95.00 per Lot beginning in 2005. Each year thereafter the maximum annual assessment may be increased by resolution adopted by the Board of Directors, at its sole discretion, by an amount not to exceed ten percent (10%) increase over the maximum assessment for the previous year without a vote of the Members of the Association. The maximum annual assessment per Lot may be increased above ten percent (10%) by a majority vote of Members In Good Standing who are voting in person or by proxy, at a meeting of the Members duly called for such purpose. If a Member chooses to exercise the option to consolidate two (2) or more Lots FOR THE PURPOSE OF VOTING as described in Article II, Section 3, the Member will be responsible for a single annual assessment for the resulting consolidated Lot. All provisions of Article II, Section 3 must be fully complied with in order to consolidate the annual assessment for the resulting consolidated Lot.
- (c) **Rates of Assessment.** Assessments shall be fixed at Uniform rates on all Lots

SECTION 3. SPECIAL ASSESSMENTS. In addition to the annual assessments authorized herein, the Board may levy one or more special assessments in any year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located within the Subdivision, including fixtures and personal property related thereto, unless otherwise hereinafter provided, any such special assessment must be approved by a vote of two-thirds (2/3rds) of the Members In Good Standing of the Association.

If a special assessment is approved as herein required and levied, it shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Special assessments shall be allocated among all Members in the same manner as annual assessments.

SECTION 4 CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. All Assessments, together with interest commencing on the due date at the rate of twelve percent (12%) per annum or such other rate of interest set from time to time by the Board of Directors not in excess of the maximum lawful rate, costs (specifically including, but not limited to, any flat charges or percentage fees charged by any collection agencies used by the Association in collecting Assessments), and reasonable attorney's fees and court costs actually incurred, shall be a charge on the land and shall be secured by a continuing lien upon the land against which each Assessment is made. Each such Assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment fell due. Each such Owner shall be personally liable for his or her portion of each Assessment coming due while he or she is the Owner of the Lot, and each Assessment thereafter coming due unless and until such Owner notifies the Association of the sale or conveyance of the Lot against which the Assessment is made as hereinafter provided in this Section 4.

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

Annual assessments shall be payable annually on January 1st or such other date specified by the Board of Directors; provided, however, the Board may, at its option, require payment of such Assessments in monthly or quarterly installments. Special assessments shall be paid in such manner and on such date or dates as may be fixed by the Board.

SECTION 5. COMPUTATION. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during each calendar year or such other fiscal year as the Board may adopt. In the event that the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year. The Board shall attempt to cause the budget and the Assessments to be levied against each Owner for the following year to be delivered to each Member at least thirty (30) days prior to the end of the current year.

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

SECTION 7. SUBORDINATION OF THE LIEN TO FIRST MORTGAGES. The lien securing the Assessments provided for herein shall be subordinate to (i) liens of ad valorem taxes and (ii) the lien of any first Mortgage which has been recorded in the real property records of Fort Bend County, Texas. Sale or transfer of any Lot subject to this Declaration shall not affect the lien hereby created. However, the sale or transfer of any Lot pursuant to foreclosure of a first Mortgage or any conveyance in lieu thereof shall extinguish the lien of such Assessments as to payments that become due prior to such sale or transfer. No such sale or transfer shall relieve such property from liability for any Assessments thereafter becoming due or from the lien thereof.

SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any Assessments which are not paid in full by January 31st or such other date specified by the Board of Directors of any year shall be delinquent. Any delinquent Assessment shall commence to bear interest on March 1st at the interest rate specified in Section 4 above. If the Assessment is not paid when due, the lien herein retained and created against the affected Lot shall secure the Assessment due, interest thereon from March 1st and payable, all costs of collection, court costs, reasonable attorney's fees actually incurred, and any other amount provided or permitted by law. In the event that the Assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit for collection against the Owner personally obligated to pay the Assessment or foreclose the lien created and reserved hereby against the Lot of such Owner.

The Association's lien is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien shall be or is required. By acquiring a Lot, an Owner grants to the Association a power of sale in connection with the Association lien. By written resolution, the Board of Directors of the Association may appoint, from time to time, an officer, agent, trustee, or attorney of the Association to exercise the power of sale on behalf of the Association. The Association shall exercise its power of sale pursuant to the Texas Property Code, and any applicable revision(s), amendment(s), or recodifications thereof in effect at the time of the exercise of such power of

sale. The Association has the right to foreclose its lien judicially pursuant to the power of sale created hereby. Costs of foreclosure may be added to the amount owed by the Owner to the Association. An Owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the Owner's debt. The Association may bid for and purchase the Lot at the foreclosure sale utilizing funds of the Association. The Association may own, lease, encumber, exchange, sell, or convey a Lot. The purchaser at any such foreclosure sale shall be entitled to sue for recovery of possession of the Lot by an action of forcible detainer without the necessity of giving any notice to the former owner or owners of the Lot sold at foreclosure. The Owner shall have no right of redemption after or resulting from a foreclosure sale of the Association's lien. Nothing herein shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien. At any time before a judicial foreclosure sale, an Owner of a Lot may avoid foreclosure by paying all amounts due the Association. Foreclosure of a tax lien attaching against a Lot under Chapter 32, Tax Code, shall not discharge the Association's lien under this paragraph for amounts becoming due to the Association after the date of foreclosure of the tax lien.

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

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

ARTICLE IV

RIGHTS IN THE EASEMENTS

SECTION 1. EASEMENTS-GENERAL. Easements for the installation and maintenance of utilities are reserved as shown and provided for on the plat of the Subdivision and/or as dedicated by separate instruments. Neither Declarant nor any utility company or authorized political subdivision using the easements referred to herein shall be liable for any damages done by them or their assigns, agents, employees or servants, to fences, shrubbery, trees, flowers, improvements or other property of the Owner situated on the land covered by such easements as a result of construction, maintenance or repair work conducted by such parties or their assigns, agents, employees or servants.

SECTION 2. EASEMENTS FOR UTILITIES AND PUBLIC SERVICES

- (a) There is hereby granted to the Association, to Fort Bend County, and to each other public authority or agency or public or private utility company, including, without limitation, the U.S. Post Service, a perpetual easement upon, over, under, and across (i) the Common Area, and (ii) those portions of all Lots as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems

and retention ponds, electrical, gas, telephone, water, and sewer lines, street lights, street signs and traffic signs; provided, however, that such easements shall not unreasonably affect the developability, marketability or value of any Lot. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Subdivision encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to excavate or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

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

SECTION 3. EASEMENTS FOR ASSOCIATION. There is hereby granted a general right and easement to the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever PRACTICABLE, only upon advance notice to and with permission of the Owner or Occupant of the residence directly affected thereby.

SECTION 4 SECURITY SERVICES. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE SUBDIVISION DESIGNED TO MAKE THE SUBDIVISION SAFER THAN IT OTHERWISE MIGHT BE. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE SUBDIVISION, HOWEVER, AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, THE DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE ARC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE ASSOCIATION OR THE ARC MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR

OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, THE ARC, THE DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, ARC, THE DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

SECTION 5. NO PARTITION. There shall be no partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Subdivision or any part thereof seek any judicial partition of the Common Area as long as the Subdivision remains subject to this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property that may or may not be subject to this Declaration.

ARTICLE V

INSURANCE AND CASUALTY LOSSES

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

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

In addition to the other insurance discussed in this Section, the Board shall obtain, as an Association Expense payable from annual Assessments, directors' and officers' liability coverage.

SECTION 2. DAMAGE AND DESTRUCTION. Immediately after damage or destruction by fire or other casualty of all or any part of the property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and the repair or reconstruction of the damaged or destroyed property, to the extent insurance proceeds are available for such purpose. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition which existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. In the event that insurance proceeds are unavailable to repair or reconstruct the Common Area the damaged or destroyed property shall be restored to its natural state and maintained by the Association in a neat and attractive condition. If insurance proceeds are insufficient to cover a repair or reconstruction, the Board may levy a special assessment to cover the shortfall, subject to the requirements set forth in Article III of Section 3 above.

ARTICLE VI

ARCHITECTURAL STANDARDS

SECTION 1. PURPOSE In order to establish and preserve a harmonious and aesthetically pleasing design for the Subdivision and to protect and promote the value of the Subdivision, the Lots in the Subdivision shall be subject to the restrictions set forth in this Article VI.

SECTION 2. ARCHITECTURAL REVIEW COMMITTEE. There is hereby established the Pecan Creek Architectural Review Committee (herein called the "Architectural Review Committee" or the "ARC"), which shall have jurisdiction over all original construction on the Lots in the Subdivision and over modifications, additions, or alterations made on or to the residences and other improvements on Lots within the Subdivision. The Architectural Review Committee shall consist of at least three (3) members, all of whom (i) shall be appointed by and may be removed at any time by the Board of Directors, and may be themselves members of the board of directors.

The Board of Directors, is authorized, but not obligated, to retain the services of consulting architects, engineers, and/or inspectors, in order to advise and assist the Architectural Review Committee in performing its functions set forth herein.

SECTION 3. ARCHITECTURAL APPROVAL. No construction of improvements, or modifications, additions, or alterations to existing improvements, shall be commenced or maintained on a Lot, including, without limitation, the construction or installation of sidewalks, driveways, walls, fences, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, elevations, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Review Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved, re-submit". If the Architectural Review Committee neither approves nor rejects such plans and specifications in writing within thirty (30) days after submission of the same to the Architectural Review Committee, approval shall be implied. Re-submitted plans and specifications shall be approved or rejected in writing within thirty (30) days after re-submission to the Architectural Review Committee. The Architectural Review Committee shall have the discretion to determine whether plans and specifications submitted for approval shall be acceptable to the Association. Disapproval of plans and specifications by the Architectural Review Committee may be based upon any grounds which are consistent with the objectives and the purposes of this Declaration as determined by the Architectural

Review Committee from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious. If after having attempted three (3) times to secure approval of his plans and specifications from the Architectural Review Committee, a submitter may appeal to the Board of Directors for approval of such plans and specifications. The ruling of the Board of Directors shall be final.

Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his improvements, or to paint the interior of the improvements on his property any color desired.

The Association is entitled to recover the actual expenses incurred to review plans and related data and to compensate any consulting architects, engineers and/or inspectors retained in accordance with the terms hereof.

SECTION 4. APPROVAL NOT A GUARANTEE OR VARIANCE. The review and approval of plans pursuant to this Article is made on the basis of aesthetic considerations only and no approval of plans and specifications and no publication of the Construction Guidelines shall be construed as representing or implying that such plans, specifications, or guidelines will, if followed, result in properly designed improvements. Such approvals and design guidelines shall in no event be construed as representing or guaranteeing that any improvements built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, the Architectural Review Committee, nor any of their respective officers, partners, directors or members, shall be responsible or liable in damages or otherwise to any Person who submits plans for approval by reason of mistake of judgment, negligence or nonfeasance arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications. The purpose of such reviews primarily seeks to conform the aesthetic appearances of development within the Subdivision.

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

SECTION 5. RIGHT TO INSPECT. Any member of the Board of Directors, the Architectural Review Committee, or their representatives shall have the right, but not the obligation during reasonable hours and with notification to the owner to enter upon and inspect any Lot to determine whether or not the improvements on such Lot are being constructed in accordance with approved plans and specifications. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In the event the Board or the Architectural Review Committee shall determine that improvements are not being constructed in accordance with approved plans and specifications, the Board shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In addition to any other remedies available to the Association, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

SECTION 6. NO WAIVER OF FUTURE APPROVALS. The approval or disapproval by the Architectural Review Committee of any plans and specifications for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Review Committee hereunder, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

SECTION 7 VARIANCES. The Architectural Review Committee may grant variances from compliance with the specific restrictions of this Declaration and from the Construction Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall be effective unless in writing or estop the Architectural Review Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing, shall not be considered a hardship warranting a variance.

ARTICLE VII

SPECIFIC USE RESTRICTIONS

SECTION 1. SINGLE FAMILY RESIDENCES. Each and every Lot in the Subdivision is hereby restricted to not more than one (1) Single Family Residence and related outbuildings and improvements, including guest houses, servants quarters, barns, stables and greenhouses, and use for single-family residential purposes exclusively and no Single Family Residence shall be occupied by more than a single family.

No business or business activity shall be carried on, in or upon any Lot at any time except with the written approval of the Board. No deliveries of stock or merchandise for sale or distribution, no traffic of customers or clients to or from a Lot, and no storage of materials, products or stock are permitted on any Lot. Perpetual or reoccurring garage sales or yard sales (or any similar vending of merchandise) conducted on any Lot shall be considered a business activity and is therefore prohibited. It is not the intent of this Section to limit a one-time sale held for a period not to exceed seven (7) days for the purpose of disposing of personal property.

SECTION 2. HOME OCCUPATIONS. Notwithstanding the provisions of Section 1 above, a Single Family Residence on a Lot may be used for a Home Occupation provided that:

- (i) No person other than the resident(s) of the Single Family Residence shall be engaged or employed in the Home Occupation at the site;
- (ii) There shall be no visible storage or display of occupational materials or products;
- (iii) There shall be no exterior evidence of the conduct of a Home Occupation and no Home Occupation shall be conducted on the Lot outside of the Single Family Residence; and
- (iv) No additional parking shall be provided for the Home Occupation.

As used herein, the term "Home Occupation" shall mean a commercial enterprise conducted in a Single Family Residence which is incidental to the principal residential use.

SECTION 3. LIVING AREA REQUIREMENTS AND SET-BACKS

- (a) The total living area of the Single Family Residences newly constructed on the Lots in the Subdivision, exclusive of porches and garages, shall be not less than 2,400 square feet for a 1-story residence and 3,000 square feet for a 2-story residence (with a minimum of 2000 square feet on the first floor).
- (b) The location of each Single Family Residence on a Lot must be approved in writing by the Architectural Review Committee with its approval of the plans and specifications. Unless otherwise approved by the ARC, a Single Family Residence must be a minimum of fifty (50) feet from the front Lot line, twenty-five (25) feet from the rear Lot line, and twenty-five (25) feet from each side Lot line. Detached garages and accessory buildings must be located behind the main residence, a minimum of twenty-five (25) feet from the rear and side Lot lines.

SECTION 4 CONSTRUCTION REQUIREMENTS Each Single Family Residence and subsequent modifications, additions, or alterations shall be all new construction. The Single Family Residence shall be the first improvement constructed on any lot along with any related outbuildings and other improvements. This requirement shall not apply to a lot that is adjacent to a lot owned by a Member and has an existing Single Family Residence or a Single Family Residence under construction. Construction of the residence shall be completed within twelve (12) months. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Architectural Review Committee. Every garage and accessory building (except a greenhouse, barn, or stable) shall correspond in style and architecture with the dwelling to which it is appurtenant.

SECTION 5. GARAGES AND DRIVEWAYS. Each Single Family Residence must have an attached port-a-cache or an attached or detached garage for a minimum of two (2) automobiles. Each Owner shall construct and maintain at his expense a driveway with a minimum width of ten (10) feet from the garage of his residence to the abutting street, including the portion of the driveway in the street easement, and the Owner shall repair at his expense any damage to the Street occasioned by connecting the driveway thereto.

SECTION 6. VEHICLES AND PARKING. No vehicle may be parked or left upon any Lot in the Subdivision, except in a garage or in driveways for temporary periods. Any vehicle parked or left not in accordance with this section shall be considered a nuisance and may be removed by the Board at the owner's expense. The term "vehicles", as used herein, shall refer to automobiles, trucks, motor homes, boats, motorcycles, minibikes, scooters, go-carts and vans. Trailers, tractors, campers, buses and other such equipment shall be stored at a location to the rear of the property or to the extent practical, out of sight from the main roads.

SECTION 7 ANIMALS AND LIVESTOCK. No animals of any kind may be raised, bred, or kept on any Lot for commercial purposes. Consistent with its use as a residence, dogs, cats, horses, cows, and other animals may be kept on a Lot once the Single Family Residence on such Lot is completed and occupied; provided, however, there shall be not more than three(3) small adult animals such as dogs and cats per acre of land and not more than two (2) large animal of any species per acre. Offspring of small adult animals such as litters may be kept on a lot. Offspring, which reach adult status, shall be counted as such, as provided for above. FFA and 4H type projects are exempt from the above restriction. Animals which are permitted to roam free, or which in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or Occupants within the Subdivision may be removed by the Association.

SECTION 8. WINDOW AIR CONDITIONERS. No window or wall type air conditioners shall be permitted to be used, erected, placed or maintained on or in any Single Family Residence, except that the Architectural Review Committee may, at its discretion, permit window or wall type air conditioners to be installed if such unit, when installed, shall not be visible from a Street.

SECTION 9. RENTING OR LEASING. Single Family Residences may be rented or leased subject to the following restrictions:

All tenants shall be subject to the terms and conditions of this Declaration and the rules and regulations promulgated by the Association as though such tenant were an Owner. Each Owner of a Single Family Residence agrees to cause his lessee or the persons living with such Owner to comply with this Declaration and the rules and regulations promulgated pursuant hereto, and is responsible and liable for all violations and losses caused by such tenants or Occupants, notwithstanding the fact that such tenants or Occupants of the residence are fully liable for any such violation. All provisions of this Declaration and of any rules and regulations promulgated pursuant hereto which govern the conduct of Owners of a Single Family Residence and which provide for sanctions against Owners shall also apply to all Occupants of a Single Family Residence even though such Occupants are not specifically mentioned.

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

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

SECTION 12. GARBAGE CANS. WOODPILES, ETC. Garbage cans, woodpiles, propane gas tanks, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Streets and Lots.

SECTION 13. WEAPONS AND FIREARMS. The recreational discharge of rim-fire, center-fire, or black powder firearms and the use of other weapons within the subdivision is prohibited.

SECTION 14 TEMPORARY BUILDINGS. Temporary buildings or structures shall not be permitted on any Lot without written approval from the Board of Directors, provided, however, temporary toilet facilities may be permitted during the construction of a new Single Family Residence or the renovation of an existing Single Family Residence.

SECTION 15 LANDSCAPING. To preserve the aesthetic appearance of the subdivision, the Owner of each Lot shall landscape his property, in a manner which is neat and presentable. Grass and weeds shall be kept mowed to prevent unsightly appearance, and all curbs, drives and walkways shall be kept trimmed.

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

SECTION 17. MAILBOXES AND ADDRESSES. Each Single Family Residence should have an individual mailbox, which complies with U.S. Postal Service requirements. Each Lot shall have a house number identifying its street address made of materials and a color or colors in keeping with the overall character and aesthetics of the subdivision.

SECTION 18. PRIVATE UTILITY LINES. For all new construction all electrical, telephone, and other utility lines and facilities which are located on a Lot and are not owned by a governmental entity or a public utility company shall be installed underground unless otherwise approved in writing by the Architectural Review Committee.

SECTION 19. ROOFTOP ELEMENTS. All stack vents and attic ventilators shall be located on a roof slope that is not visible from any Street and shall be mounted perpendicular to the ground plate. All exposed roof stack vents, attic ventilators, etc. on each Single Family Residence must be painted to match the color of the roof. No solar collectors shall be allowed on any roof slope on the front elevation of the residence.

SECTION 20. DECORATIONS. Decorations placed on front lawns of lots and any portion of a lot visible from any street shall be consistent with the aesthetics of the subdivision. Decorative appurtenances such as sculptures, fountains or other decorative embellishments which in the opinion of the Architectural Review Committee or the Board of Directors is not consistent with the aesthetics of the subdivision or which constitutes an eyesore, nuisance, or unsafe condition shall be removed at the Owner's expense. Owners shall be entitled to a review process as outlined in Article VI, Section 3.

SECTION 21. PLAYGROUND EQUIPMENT. All playground equipment on a Lot must be placed behind the front elevation of the house.

SECTION 22 SIGNS. No signs, billboards, posters, or advertising devices of any kind shall be permitted on any Lot other than (a) one sign advertising a particular Lot and residential structure on which the sign is situated for sale or rent, (b) one sign to identify the particular Lot during the period of construction of a Single Family Residence thereon as for sale or (c) temporary signs for announcing special occasions and events.

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

SECTION 23. FENCES AND WALLS All fences that run parallel and adjacent to a street must be constructed in a three rail or crossboard style in keeping with the country theme. Minimum acceptable

materials include penetrated wood, cedar or redwood painted white or black or left in a natural state. Wire mesh of a minimum 3-inch square may be used in conjunction with a three rail or crossboard fence in order to contain or exclude small animals. The wire mesh must be attached to the inside of the wood rails or crossboards and not extend above the top rail. All other fences, walls and materials must be approved in writing by the ARC.

SECTION 24. WINDOW TREATMENTS. Window treatments shall be consistent with the aesthetics of the subdivision. Reflective materials, sheets, newspapers, shower curtains, fabric not sewn into finished curtains or draperies, plastic, cardboard, or other materials not expressly made for or commonly used by the general public for window coverings in a development of the same caliber as the Subdivision shall be prohibited as permanent or long term window treatments.

SECTION 25. WATER WELLS AND SANITARY SEWER SYSTEMS. Each Owner shall construct and install, at his expense, a water well and sewage treatment system to serve the Single Family Residence on his Lot.

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

ARTICLE VIII

MORTGAGEE PROVISIONS

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

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

- (a) any proposed termination of the Association;

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

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

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

ARTICLE IX

GENERAL PROVISIONS

SECTION 1. TERM. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect for a period of forty (40) years after the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by not less than two-thirds (2/3rds) of the Members In Good Standing of the Association subject to the provisions hereof agreeing to terminate this Declaration has been recorded within the year immediately preceding the beginning of a ten (10) year renewal period, in which case this Declaration shall terminate at the end of its original term or the applicable extension period. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration may be extended and renewed as provided in this Section.

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

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

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

SECTION 5. AMENDMENT. This Declaration may be amended from time to time by an instrument in writing if signed by more than fifty percent the Members In Good Standing of the Association; and (i) such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (ii) such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the

property subject to this Declaration; or (iii) such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the property subject to this Declaration; or (iv) any other purpose, provided that the amendment has no material adverse effect upon any right of any Owner or that the Owner or Owners so affected have consented thereto.

Notwithstanding the foregoing, this Declaration may be amended only by an instrument in writing signed by two-thirds (2/3rds) of the Members In Good Standing of the Association if the purpose of such amendment is to: (i) nullify or substantially alter the overall development scheme herein set forth; (ii) modify the equal representation of membership on the Board of Directors by Owners of property lying North of Jones Creek and Owners of property lying South of Jones Creek; (iii) modify Section 3 of Article III to allow Special Assessments to be approved by vote of less than two-thirds (2/3rds) of the Members in Good Standing of the Association; or (iv) modify this Section 5 of this Article IX relating to amendments to this Declaration.

Any amendment to this Declaration must be signed by the Declarant or by the required number of Owners as set forth above and recorded in the real property records of Fort Bend County, Texas.

SECTION 6. MERGER AND CONSOLIDATION. Upon a merger or consolidation of the Association with another non-profit corporation organized for the same or similar purposes, the Association's properties, rights, and obligations may be transferred to the surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions and restrictions established by this Declaration, together with the covenants, conditions and restrictions applicable to the properties of the other association as one scheme. No merger or consolidation shall be permitted except with the assent of two-thirds (2/3rds) of the Members In Good Standing of the Association.

SECTION 7. DISSOLUTION. The Association may be dissolved with the assent of Members by an instrument in writing, signed by two-thirds (2/3rds) of the Members In Good Standing of the Association. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

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

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

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

SECTION 10. NOTICE OF SALE OR TRANSFER OF TITLE. In the event that an Owner sells or otherwise transfers title to his or her Lot, as specified in Section 4 of Article III such Owner shall give the Association written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Association, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of Assessments, notwithstanding the transfer of title to the Lot.

OFFICERS OF PECAN CREEK HOMEOWNER'S ASSOCIATION

By: [Signature]
President - Richard R. Russek

By: - [Signature]
Vice- President - Rob Cook

By: - _____
Director - Arthur Gibson

By: - [Signature]
Director - Lisa Kahlden

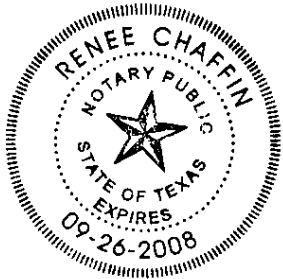
THE STATE OF TEXAS §

COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared Richard R. Russek, Rob Cook, Lisa Kahlden

known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

SUBSCRIBED AND SWORN TO BEFORE me on this the 4th day of February 2005



[Signature]
NOTARY PUBLIC, STATE OF TEXAS

**Fourth Amendment and Restatement of
Declaration of Covenants,
Conditions and Restrictions for Pecan Creek
An Unrecorded Subdivision.**

Exhibit "A"

Pecan Creek Subdivision (the "Subdivision") is more fully described as follows:

170.75 acres of land being in the North portion of the Mason Briscoe 618.96 acre tract in the William Andrus League, Abstract 3, Fort Bend County, Texas, said League Abstract 3, in Fort Bend County, Texas.

Begin at the iron pipe found in the North Right of Way of Richmond-Foster Road (farm to Market Road No. 359 -100 feet wide), marking the southwest corner of the R.E. Smith and W.M. Wheless Tract and the Southeast corner of and place of beginning for this tract;

Thence, along a fence line marking the North Right of Way line of FM 359 with the following courses and distances:

South 89 49' 13" West – 669.92 feet to a concrete monument;
North 88 06' 47" West – 198 feet to an angle point;
North 85 05' 47" West – 197.4 feet to an angle point;
North 80 02' 47" West – 197.4 feet to an angle point;
North 76 05' 17" West – 197.8 feet to an angle point;
North 73 34' 27" West – 70.7 feet to a concrete monument;
North 72 34' West – 128.5 feet to a point for the Southwest corner of this tract;

Thence, North 00 01' 13" East, at 361 feet intersect fence line and continue North 00 02' 13" East along said fence marking the East line of the John Rosenbush tract pass Jones Creek, then continue North 00 02' 13" East in all 3,976.3 feet to an angle point in said fence line 676.9 feet to a point in the centerline of Jones Creek for the Northwest corner of this tract;

Thence, Southeasterly along the centerline of Jones Creek with the following course and distances:

South 57 28' 20" East – 122.6 feet to an angle point;
South 70 27' East – 149.9 feet to an angle point;
South 78 32' 14" East – 135.4 feet to an angle point;
South 71 11" East -- 328.5 feet to an angle point;
South 78 13' 10" East -- 256.8 feet to an angle point;
South 77 36' 20" East – 256.8 feet to an angle point;
South 87 27' East – 291.2 feet to an angle point;
North 82 50' 12" East – 124.17 feet to a point for the Northeast corner of this tract;

Thence, South 00 05' 40" East. Along a fence line marking the West line of said R.E.Smith and W.M. Wheless Tract, at 73.54 feet pass an iron pipe found in said fence line, pass Jones Creek; in all 4,472.99 feet to the place of beginning and containing 170.75 acres of land.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dr. Dianne Wilson

2005 Feb 07 11:09 AM

2005014832

BSH \$61.00

Dianne Wilson, Ph.D. COUNTY CLERK

FT BEND COUNTY TEXAS