

DECLARATION OF RESTRICTIVE COVENANTS AND  
HOME OWNERS ASSOCIATION FOR VILLAGE AT MAC ARTHUR COMMONS  
DALLAS COUNTY, TEXAS

THIS DECLARATION MADE THIS 16th Day of January, 1986, by JEFFERSON PROPERTIES, INC., a Texas corporation, hereinafter called "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described in Section 1.2 of this Declaration and desires to subject all of the real property described in Section 1.2 hereof to the covenants, restrictions, charges and liens hereinafter set forth; and

WHEREAS, the Village At Mac Arthur Commons Home Owners Association has been incorporated under the laws of the State of Texas as a non-profit corporation, and has been granted powers of administering and enforcing the covenants, restrictions, charges and liens and disbursing the assessments and charges hereinafter created by this Declaration.

NOW, THEREFORE, Declarant declares that the real property described in Section 1.2, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, charges and liens hereinafter set forth.

ARTICLE I

GENERAL

Section 1.1 Definition. The following words, when used in this Declaration, unless the context shall prohibit, shall have the following meanings:

(a) "Association" shall mean and refer to the Village At Mac Arthur Commons Home Owners Association, a Texas non-profit corporation.

(b) "Property" shall mean and refer to all of the real property (including improvements) described in Section 1.2 hereof, and additions of improvements thereto, as are subject to this Declaration and covered by the Plat.

(c) "Common Property" shall mean and refer to those areas of land and all improvements thereon which are identified as "Common Property" or "Private Access Easement" or otherwise labeled as being "private" but not located within any established lot as shown on the Plat of the Property and includes, without limitation thereon, each of the following:

(1) Any alley way designated on the Plat as a "Private Alley" or "Private Access Easement."

(2) All curbs, gutters, paving or other improvements which are part of or related to any Private Alley or Private Access Easement as designated on the Plat.

(3) All fences, walls, plant beds, landscape or other improvements established for screening, security or privacy around the perimeter of the Property, separating the Property from public lands, streets or thoroughfares or any private property external to the perimeter of the Property. As used in this subsection 1.1(c)(3), "separating the Property from public lands, streets, thoroughfares or any private property external to the perimeter of the Property" shall mean separation of the real property covered by the Plat from all surrounding roads, streets, developments and real property, but shall not include fences, walls, landscape or other improvements that screen, secure or otherwise separate any lot shown on the Plat from any other lot shown on the Plat or any public street or any public alley way shown on the Plat or any private alley way shown on the Plat.

(4) That certain landscape screening shown on the Exhibit "D" separating the Property from Mac Arthur Boulevard and Chisholm Trail and labeled "Private Common Area."

(5) All irrigation systems or other improvements located on, directly connected with or essential to the use or upkeep of any of the Common Property.

(d) "Declarant" shall mean and refer to Jefferson Properties, Inc., a Texas corporation, and its successors and assigns in interest, and shall include any person or entity to which Declarant may assign its rights and privileges, duties and obligations hereunder, each of which are and shall be assignable.

(e) "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

(f) "Fiscal Year" or "fiscal year" shall mean the calendar year commencing January 1 and terminating December 31 of each year.

(g) "Plat" shall mean the original Plat of the Property filed for record in Volume 86009, Page 2080, Map Records, Dallas County, Texas, a copy of which, modified to show the Sideyard Easement (as defined below), is attached hereto as Exhibit "D" and by reference made a part hereof for all purposes.

(h) "Sideyard Easement" shall mean a five (5) foot permanent easement located along the entire interior lot line of one lot for the benefit and use of the lot immediately adjoining the Sideyard Easement as depicted for example purposes on Exhibit "B"

attached hereto and by reference made a part hereof for all purposes. Not all lots shown on the Plat are either benefited or encumbered by a Sideyard Easement, and reference must be made to Exhibit "C" and Exhibit "D" (attached hereto and by reference made a part hereof for all purposes) to determine which lots are either benefited with a Sideyard Easement or encumbered by a Sideyard Easement. The lots benefited by a Sideyard Easement are listed as "Lot A" on Exhibit "C" and those encumbered by a Sideyard Easement are listed as "Lot B" on Exhibit "C". The location of the Sideyard Easement on each so-called "Lot B" is depicted on Exhibit "D". It is the intention of this Declaration that the grant of Sideyard Easements will provide each applicable "Lot A" with a private sideyard for the exclusive use of the "Lot A" adjoining that Sideyard Easement.

Section 1.2 Property Subject to Declaration. The real property covered by this Declaration is described on Exhibit "A" attached hereto and by reference incorporated herein for all purposes. All of the Property and any right, title or interest therein shall be owned, held, leased, sold and/or conveyed by Declarant, and any subsequent owner of all or any part thereof, subject to this Declaration and the covenants, restrictions, charges and liens set forth herein.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 2.1 Membership. Each and every person, persons or legal entity who shall own record fee title to any lot as shown on the Plat shall automatically be a member of the Association; provided, that any person or entity who merely holds an interest in the title through a beneficial or other interest or holds a lien as security for the performance of any obligation shall not be a member of the Association.

Section 2.2 Classes of Voting Members. The Association shall have only one (1) class of voting membership. Each owner of a lot as platted and shown on the Plat shall have one (1) vote for each such lot owned regardless of: (i) the square footage of each such lot; (ii) the assessed value or market value of such lot; or (iii) the replatting of any lot or lots into one (1) or more lots. If record fee title to any lot is held in the name of more than one (1) person or entity, the one (1) vote allocated to such lot shall be exercised as the record owners among themselves determine; but in no event shall the owners of any lot be allowed to cast more than one (1) vote per lot owned and no fractional vote shall be allowed to be cast or counted for any one (1) lot. Any lot owner shall have the right to assign its one (1) vote and all its voting interest to any tenant occupying that owner's lot under a lease for a term of more than five (5) years, provided, the Association must be given written notice of any such assignment and a copy of such assignment, together with a memorandum of such lease, must be placed of record in the real property records of Dallas County, Texas.

## ARTICLE III

### ASSESSMENTS

Section 3.1 Covenants for Assessments. The Declarant for each lot shown on the Plat and owned by it within the Property hereby covenants, and each purchaser of any such lot or portion thereof by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant to pay to the Association: (i) annual assessments or charges (as specified in Section 3.3 hereof); and (ii) special assessments for capital improvements (as specified in Section 3.4 hereof). All of such assessments shall be fixed, established and collected from time to time as hereinafter provided.

Section 3.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of administering, managing, improving, maintaining, repairing and operating the Common Property, administering the Association, the Property, the Declaration, the Bylaws and all Rules and Regulations, and promoting the comfort, health, safety and welfare of the owners of any lot on the Plat or any portion thereof on the Property, and for carrying out the purposes of the Association as stated in its Articles of Incorporation and Bylaws.

Section 3.3 Annual Assessment. Each owner of any lot shown on the Plat shall pay to the Association an annual assessment equal to the resulting product from multiplying the annual budget for such year for the Association as determined and approved by the Board of Directors times the quotient of the number of votes allocated to that owner's lot(s) in the Association divided by fifty-eight (58). The Association may not accumulate a surplus at the end of any fiscal year which is more than fifty percent (50%) of the prior year's approved budget. Should excess surplus (as above defined) exist at the end of any fiscal year, the Board of directors shall reduce the next total annual assessment to the members based on the approved budget by an amount at least equal to said excess surplus; provided, excess surplus shall not include any reserves held by the Association for capital improvements or replacements.

Section 3.4 Special Assessments. In addition to the annual assessments authorized by Section 3.3 hereof, the Association may, by vote of its members as set out in Section 3.5 hereof, levy in any assessment year or years a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements on the Common Property, including the necessary fixtures and personal property related thereto, or for carrying out other purposes of the Association as stated in its Articles of Incorporation and Bylaws for which the Association does not have sufficient funds in its regular budget. Such special assessments shall be levied in the same prorata manner as the regular annual assessments.

Section 3.5 Vote Required for Special Assessment. Except for special assessments levied by the Association as required by Section 8.1 hereof to supplement the Association's operating budget due to inadequate funds under the Association's regular annual assessment, all other special assessments authorized by Section 3.4 hereof must be approved by a majority

(fifty-one percent (51%) of the total eligible votes in attendance of the membership of the Association as defined in Article II hereof, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting. No vote (other than a majority vote by the Board) shall be required for any special assessments levied by the Board as required under Section 8.1 hereof to meet any budgetary shortage.

Section 3.6 Commencement Date of Annual Assessment. The first annual assessment or prorata portion thereof provided for herein shall be made upon the first to occur of January 2, 1988 or the first conveyance by Declarant, or its successors or assigns in interest, of fee title to a platted lot on the Property having a completed, habitable residence thereon to a purchaser. The conveyance of any unimproved lot shall not constitute a conveyance for purposes of triggering annual assessments.

Section 3.7 Due Date of Assessments. The first annual assessment shall become due and payable on the first to occur of January 2, 1988 or thirty (30) days following the first conveyance of a completed residence and lot on the Property as provided in Section 3.6 above, and shall be considered delinquent if not paid by February 1, 1988 or within said thirty (30) day period as applicable. The assessments for each subsequent year after the first annual assessment shall be due and payable on January 2 of each such year and shall be delinquent if not paid by February 1 of each such year. The due date and delinquent date of any special assessment under Section 3.4 hereof shall be fixed in the resolution authorizing such assessment.

Section 3.8 Owner's Personal Obligation for Payment of Assessments. The annual and special assessments provided for herein shall be the personal and individual debt(s) of the owner(s) of the lot or property covered by such assessments. No owner may exempt himself from liability for such assessments. In the event of default in the payment of any such assessment, the owner of the applicable lot shall be obligated to pay interest at the highest lawful rate per annum under then applicable Texas or federal law or at such lesser rate as may from time to time be set by the Board on the amount of the assessment from the due date thereof until paid, together with all costs and expenses of collection, including reasonable attorneys' fees.

Section 3.9 Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article III but unpaid shall, together with interest and the cost of collection, including attorneys' fees, as provided in Section 3.8 hereof, thereupon become a continuing lien and charge on the lot covered by such assessment, which shall bind such lot in the hands of the owner, and his heirs, devisees, personal representatives and assigns. Declarant hereby reserves, grants and assigns to the Association, without recourse, a vendor's lien and a contractual lien against each lot or portion thereof located on the Property to secure the payment of all assessments authorized under this Declaration. Declarant hereby expressly reserves and grants to the Association and its agents the right and power to bring all actions against all members of the Association personally for the collection of such assessments and other sums as a debt and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including a judicial foreclosure or a non-judicial foreclosure pursuant to Chapter 51, Section 51.002 of the

Texas Property Code, Texas Revised Civil Statutes, as amended or supplemented from time to time and any replacement therefor, such Chapter 51 and all relevant provisions of Section 51.002 being incorporated in this Declaration by this reference. By acceptance of title to any lot, each owner (and member of the Association) shall be deemed to have expressly ratified the grant of such right and power, including, without limitation, the right of private power of sale in connection with such liens. The Association may also temporarily suspend the rights of any member to vote while such member is in default in payment of any assessment or other sum. All remedies provided herein shall be cumulative and not exclusive. The aforesaid lien to secure assessments shall be superior to all other liens and charges against any lot located within the Property, except only for tax liens and any sums unpaid on a first mortgage lien or first deed of trust lien properly filed of record. The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Association. To evidence the aforesaid assessment lien, the Association shall prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the owner of the lot covered by such lien and a description of the lot or portion thereof covered by the lien. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Dallas County, Texas. Such lien for payment of assessments shall attach with the priority set forth above from the date that such payment becomes delinquent as set forth in Section 3.7 hereof and may be enforced by the foreclosure of the defaulting owner's lot by the Association. In any foreclosure proceeding, whether judicial or non-judicial, the owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred. The Association shall have the power to bid on the lot or portion thereof subject to sale at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any mortgagee holding a lien on any lot located on any part of the Property, the Association shall report to said mortgagee any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.

Section 3.10 Common Property Exempt. All Common Property as defined in Article I hereof, and all portions of the Property owned by or otherwise dedicated to any political subdivision, including the City of Irving and Dallas County Utility and Reclamation District, shall be exempted from the assessments and lien created herein.

#### ARTICLE IV

#### PROTECTIVE COVENANTS

Section 4.1 Covenants Applicable to the Property. The following provisions shall be applicable to any and all construction, improvements, alterations or additions to any lot located on the Property:

(a) Use Limitations. Except for the use of lots by Declarant or other builders for materials storage during construction only, and as sales models with related customer parking for the sale of residences to be constructed on the Property, lots and land within the Property may be used only for free-standing residential dwellings (except for the

Common Property, which shall be used for the purposes and uses indicated in this Declaration and on the Plat). In addition, the following uses of lots on the Property are not permitted:

- (1) Any use which involves a noxious odor or an excessive noise level (except in the construction of a residence).
- (2) Any use contrary to law or which violates any Section of this Article IV.
- (3) Off street parking of campers, mobile homes, boats, trailers or motor homes, except in enclosed garages or driveways, and except as related to contractor sales models.
- (4) Any use which involves the raising, breeding or keeping of any animals or poultry on a commercial basis or which involves the keeping of any animals other than common domestic pets such as dogs, cats, fish or birds.

(b) Minimum Setback Lines. No structure of any kind and no part thereof shall be placed within the front setback line on any lot as shown on the Plat and no buildings shall be placed within the rear or side lot setback lines. The building setback lines shall be as follows for each lot shown on the Plat: twenty (20) feet for the front setback line from the property line adjoining the street right of way, ten (10) feet for the rear setback line from the property line adjoining the alley right of way, five (5) feet on each side of each interior lot line, fifteen (15) feet for the side lot line of any corner lot facing a public street, and five (5) feet for any side lot line facing any alley. The Common Property is expressly excluded from any setback lines or setback restrictions. The term buildings as used in this paragraph with respect to the rear and side lot lines shall not include any privacy fences or walls, hot tubs, patios, swimming pools or similar structures, but said structures shall be subject to a five (5) foot setback line from the rear property line.

(c) Driveways and Garages. Each dwelling or residence on a lot located within the Property shall have a rear-entry or side-entry garage. Each garage shall be sufficient to house two (2) vehicles off the streets and alley ways located within the Property. No residence or dwelling shall have a front entry garage. No garage shall be modified or used as part of the dwelling area of the residence.

(d) Landscaping. Landscaping:

- (1) shall be required on all lots, contemporaneously with the completion of other improvements if possible, but in no event later than one hundred eighty (180) days after first occupancy or completion of a residential structure, whichever shall first occur;
- (2) shall conform to general residential standards and practices found in the

Dallas/Fort Worth area and shall cover all areas of the lot not otherwise covered with a building or other structure, pavement or other improvements;

(3) shall utilize plants or ground cover suited to the Dallas/Fort Worth area and shall not include any wild grasses, wild shrubs or weeds;

(4) shall be well watered, maintained and all grasses and ground covers shall be regularly cut and cared for so as to have an attractive appearance and uniform height;

(5) shall not obstruct sight lines at street or driveway intersections; and

(6) shall permit reasonable access to public and private utility lines and easements for installation and repair.

(e) Screening. The Common Property labeled on the Plat as "Private Common Area" has been planted by Declarant with landscape shrubbery and trees to act as a buffer zone and screening for the Property from Mac Arthur Boulevard. This landscaped area shall not be removed or used for any other purpose except upon the vote of seventy-five percent (75%) of the members of the Association and shall be watered, maintained and cared for by and at the expense of the Association.

(f) Sideyard Easement. Except as otherwise stated in this Declaration, it is the intent of Declarant and this Declaration to require the establishment of Sideyard Easements on each "Lot B", as identified on Exhibit "C", and to require the construction of residential structures on each identified "Lot B" in conformance with this Declaration and the location of each Sideyard Easement as shown on Exhibit "D" so as to create a privacy side yard for the benefit of the immediately adjoining "Lot A". This will be accomplished by requiring that for each lot designated as "Lot B" on Exhibit "C", the structural wall of the residence facing or abutting the Sideyard Easement on that lot be a blank wall without windows (the "Blank Wall"). As such, Declarant, with respect to each lot located within the Property and as to each owner, and such owner's successors and assigns in interest, hereby subjects each lot shown on the Plat and identified on Exhibit "C" as a "Lot A." or a "Lot B" to the following obligations and restrictions with respect to a Sideyard Easement:

(1) Each lot within the Property identified as being a "Lot B" as listed on Exhibit "C" shall be and is hereby made subject to a perpetual Sideyard Easement in the location shown on Exhibit "D" for the benefit of the applicable Lot A adjoining such Sideyard Easement.

(i) The owner of Lot A shall have and is hereby granted a Sideyard Easement to use and to place improvements upon the five (5) foot strip of Lot B which constitutes the Sideyard Easement and is contiguous with Lot A as depicted on Exhibit "D". The owner of Lot A shall be responsible for the

maintenance and upkeep of said area and shall repair any damage caused to the applicable Lot B by the exercise or use of this Sideyard Easement.

(ii) The owner of Lot A: (x) shall build, keep, maintain and replace as necessary a front privacy wall and/or fence and/or combination wall and wrought iron fence of uniform height and design and matching materials as originally constructed on the lot 6r as may from time to time be approved as a variance by the Board. Said front privacy wall shall run across the Sideyard Easement between and adjoin both the structure located on Lot A and the structure located on Lot B as shown for example purposes on Exhibit "B" (y) is hereby granted a permanent easement for said front fence or wall and any other improvements authorized by this Declaration which are constructed behind said fence or wall within the area of said privacy sideyard on the Sideyard Easement and for the maintenance, repair and replacement thereof; and (z) shall be liable and pay for all maintenance of the area within the Sideyard Easement benefiting Lot A or any maintenance performed by the Association as authorized under this Declaration on the Sideyard Easement and benefiting Lot A as if said Sideyard Easement is a part of the property owned by the owner of Lot A.

(iii) Subject to subsection 4.1(f)(1)(iv) below, improvements that may be constructed on the Sideyard Easement by the owner of the benefited Lot A include landscaping, fences or any other permanent improvements for which a building permit has been issued by the City of Irving, Texas. However, no structural improvements (i.e., pool, hot tub, patio, fence, etc.) may be constructed on the Sideyard Easement between the street and front privacy wall or fence to be constructed by the owner of Lot A under Subsection 4.1(f)(1)(ii) hereof. It is the intention of this Declaration to limit the construction of all structural improvements to the backyard and private side yard for each Lot A located behind said front privacy wall.

(iv) The following described Sideyard Easements are hereby made and shall be subject to an underground public utility easement granted by Declarant to Texas Power and Light Company and/or the City of Irving, Texas across and under each of said Sideyard Easements for the benefit of the Property; and any use of and all improvements constructed on each of said Sideyard Easements shall be consistent with and for all purposes subject to said public utility easements as so and whenever granted by Declarant:

A. Sideyard Easement located on Lot 9 for the benefit of Lot 10 in Block 1 as identified on the Plat and as shown on Exhibit "D" hereto.

B. Sideyard Easement located on Lot 16 for the benefit of Lot 15 in Block 1 as identified on the Plat and as shown on Exhibit "D"

hereto.

C. Sideyard Easement located on Lot 3 for the benefit of Lot 4, in Block 2 as identified on the Plat and as shown on Exhibit "D" hereto.

D. Sideyard Easement located on Lot 9 for the benefit of Lot 10 in Block 2 as identified on the Plat and as shown on Exhibit "D" hereto.

E. Sideyard Easement located on Lot 21 for the benefit of Lot 20 in Block 2 as identified on the Plat and as shown on Exhibit "D" hereto.

F. Sideyard Easement located on Lot 16 for the benefit of Lot 15 in Block 2 as identified on the Plat and as shown on Exhibit "D" hereto.

G. Sideyard Easement located on Lot 12 for the benefit of Lot 11 in Block 3 as identified on the Plat and as shown on Exhibit "D" hereto.

In addition to the above, Declarant has further granted to Texas Power and Light Company and/or the City of Irving, Texas certain public utility easements for the benefit of the Property as follows and to which the Property shall be and is hereby made subject: first, a two and one-half (2½) foot public utility easement across the rear of each lot adjoining each public and/or private alley on the Property as such alley is shown on Exhibit "D" hereto; second, a two and one-half (2½) foot public utility easement on the side lot line of Lot 2, Block 1 where it adjoins the private alley as such Lot and alley are shown on Exhibit "D" hereto; and third, a five (5) foot public utility easement on Lot 6, Block 1, adjoining the southwest side lot line separating Lot 5 and Lot 6 of said Block 1 as said two Lots are shown on Exhibit "D" hereto.

(2) Each lot within the Property identified as being a "Lot A" on Exhibit "C" shall be and is hereby made subject to restrictions on the use of the Sideyard Easement appurtenant to that lot and located on the applicable adjoining "Lot B" in the location depicted on Exhibit "D" as follows:

(i) There is hereby reserved in favor of each owner of Lot B the right of ingress and egress over and across the Sideyard Easement located on his own property any day between the hours of 8:00 A.M. and 6:00 P.M. for the purpose of necessary repairs and maintenance of improvements located on Lot B, including the residential structure and the rear wall or fence extending from the house on Lot B to the rear of the lot or fence line. The owner of Lot B shall repair any damage caused to the improvements placed by the owner of Lot A on the Sideyard Easement as the result of the exercise or use of this right.

(ii) An aerial easement or reservation by Lot B onto the Sideyard Easement for the encroachment, if any, of the eaves and gutters or other portions of the house located on Lot B; provided, however, no such encroachment shall extend more than two (2) feet onto the Sideyard Easement benefiting Lot A.

(3) Each structure or residence located on any lot identified as being a "Lot B" on Exhibit "C" shall be subject to the following restrictions for the benefit of the applicable adjoining "Lot A" as identified on Exhibit "C" and as depicted on Exhibit "D" :

(i) The walls of any residence on "Lot B" facing the Sideyard Easement in favor and for the benefit of "Lot A" shall not contain any windows, holes or openings of any kind other than roofing ventilation openings, but shall be a Blank Wall of solid masonry or wood frame construction with a solid brick surface for at least the first eight (8) feet in height so as to be of uniform appearance with the original construction and create a private sideyard for the benefit of the applicable "Lot A".

(ii) The residence on "Lot B" shall have a solid rear privacy wall or fence as depicted for example purposes on Exhibit "B" constructed of uniform height and design as originally constructed on the lot or as may from time to time be approved as a variance by the Board. Said rear privacy fence or wall shall be placed in the approximate location shown on Exhibit "B" with respect to the Sideyard Easement and the owner thereof shall maintain and replace the same as and whenever necessary.

(4) Each lot within the Property containing two interior lot lines, except for Lot 5, Block 1; Lot 6, Block 1; Lot 11, Block 2; and Lot 14, Block 2 as shown on the Plat, shall be listed on Exhibit "C" as being both a "Lot A" and a "Lot B", so that each lot has the benefits of the Sideyard Easement as a "Lot A" and the burden of a Sideyard Easement as a "Lot B". Except for Lot 1, Block 1; Lot 19, Block 1; Lot 12, Block 2; and Lot 13, Block 2 as shown on the Plat, which are not subject to nor benefited by any Sideyard Easement, each corner lot within the Property shall be designated as being either a "Lot A" or a "Lot B" on Exhibit "C" but not as both. Lot 11, Block 2 and Lot 14, Block 2 as shown on the Plat shall each be designated as a "Lot A" on Exhibit "C" and shall be benefited with but not burdened by a Sideyard Easement, inasmuch as the residences constructed on Lot 12 and Lot 13 of Block 2 do not require the benefit of a Sideyard Easement. For any lot listed as being a "Lot B" on Exhibit "C" the location of the Sideyard Easement burdening that lot shall be as shown on Exhibit "D" and shall benefit as an easement appurtenant the applicable "Lot A" adjoining such Sideyard Easement.

(5) In the event of any dispute between adjoining owners as to: (i) the location or permitted uses of the Sideyard Easement, (ii) the improvements that are either required to be or that may be placed thereon or (iii) as to which side of a particular lot is subject to or benefited by the Sideyard Easement, the Board of Directors is hereby empowered to arbitrate any such dispute and the findings and the decision of the Board shall be written and a record kept and shall be binding and final on each applicable lot owner for all purposes. Each owner of a lot within the Property agrees to this provision and to be bound by the Board's decision in any such arbitration by the Board by the acceptance of a deed for any lot or land within the Property.

(6) The Board is hereby empowered on request from any owner of record to consider and grant to such owner a variance concerning the types of improvements that may be located on, or the height, setback or kinds of materials that may be used in any fence or wall on the Sideyard Easement benefiting such owner's lot; provided that no such variance may:

(i) adversely impact in a material way the lot burdened by the Sideyard Easement beyond the original grant of the Sideyard Easement under this Declaration; or

(ii) expand the scope of, terminate or otherwise substantially alter the Sideyard Easement or private sideyard of an adjoining lot as established by this Declaration.

Section 4.1 (g) Solar Panels. No dwelling or resident may add solar panels to the residential structure or any other structure such that such panels are visible from the public street(s) in front of the residential structure or in violation of any applicable law or ordinance of the State of Texas, Dallas County, or the City of Irving.

Section 4.1 (h) Remodeling. Any changes to a residential structure that enlarges the footprint of the structure or increases upper floor square footage, shall be presented to and approved by the Board prior to any property changes.

Section 4.1 (i) Any new residential dwelling construction must have at least seventy-five percent (75%) brick exterior.

Section 4.2 Termination of Sidevard Easement. The Sideyard Easement is intended to be permanent and to continue notwithstanding any termination of this Declaration or the Association and may only be terminated as provided in Article X hereof by an instrument duly authorized, executed and recorded in the Deed Records of Dallas County, Texas.

## ARTICLE V

## MAINTENANCE

Section 5.1 Duty of Maintenance. Owners and occupants (including lessees) of any lot located within the Property or any other part of the Property shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that portion of the Property so owned or occupied, including buildings, improvements, grounds and any Sideyard Easement in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and wastes;
- (b) Lawn mowing;
- (c) Tree and shrub pruning;
- (d) Watering;
- (e) Keeping lawn and garden areas alive, free of weeds and attractive;
- (f) Keeping parking areas, driveways and the exterior of all structures in good repair;
- (g) Repair of exterior damages to improvements; and
- (h) Regular painting as required to maintain and protect any exterior improvements in an attractive, protected condition.

Section 5.2 Enforcement. If, in the opinion of the Association, any owner or occupant of a residence located on the Property has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure by mailing such notice to that owner's lot or to such other address as that owner may have provided the Association in writing and such person must within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the applicable lot or any portion thereof and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The owners and occupants (including lessees) of any lot or any other part of the Property on which such work is performed shall jointly and severally be liable for the cost of such work and shall reimburse the Association for such costs promptly upon demand. If such owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all of said persons jointly and severally, and shall constitute a valid lien against that lot or portion of the Property on which said work was performed. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in Section 3.9 hereof, which provisions are incorporated herein by reference, and the Association shall have identical powers and rights in all respects, including, but not limited to, the rights of judicial foreclosure and non-judicial

foreclosure with a power of private sale.

## ARTICLE VI

### COMMON AND RELATED PROPERTY

Section 6.1 Easements of Enjoyment. Subject to the provisions of Section 6.3 hereof, every member of the Association shall have a right and easement of enjoyment in and to the Common Property.

Section 6.2 Title to Common Property. Declarant shall convey ownership of the Common Property to the Association which shall be the owner of and responsible for the operation and maintenance of all Common Property; provided, that upon any termination of this Declaration and/or the Association, fee title to all Common Property not previously conveyed by the Association shall vest in all of the then owners of lots on the Property who shall hold title to the Common Property as tenants in common with joint and several liability for the maintenance and all obligations connected with the Common Property. The percentage interest of each such lot owner in the Common Property upon any such termination of the Association and the vesting of such title would be equal to the quotient of the number of lots as shown in the original Plat owned by such owner divided by fifty-eight (58).

Section 6.3 Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to prescribe rules and regulations for the use, enjoyment and maintenance of the Common Property;
- (b) The right of the Association to sell and convey the Common Property, or any part thereof; provided, such sale or conveyance is approved by seventy-five percent (75%) of the total eligible votes of the membership of the Association as defined in Article II hereof, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting;
- (c) The right of the Association to borrow money for the purpose of improving the Common Property, or any part thereof, and to mortgage the Common Property to secure such loan, or any part thereof; provided, that such borrowing is approved by fifty-one percent (51%) and such mortgage is approved by seventy-five percent (75%) of the total eligible votes of the membership of the Association as defined by Article II hereof, voting in person or by proxy at a meeting duly called in the same manner as provided in Subsection 6.3(b) hereof;
- (d) The right of the Association to take such steps as are reasonably necessary to protect the Common Property, or any part thereof, against foreclosure;

(e) The right of the Association to suspend the easements of enjoyment of any member of the Association during the time any assessment levied under Article III hereof remains unpaid and delinquent, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

Section 6.4 Maintenance of Common Property. The Association shall include in its budget for each fiscal year sufficient sums to and shall adequately and properly care for, maintain and repair the Common Property in a safe, attractive and well maintained condition, including but not limited to the same items of care and maintenance for which the members are responsible on their individual lots under Section 5.1 hereof, together with all patch work, repair and replacement needed for any private alley way, private access easement or for any wall or fence on the Common Property and for any landscape buffer.

Section 6.5 Removed on March 8, 2007.

Section 6.6 Utility Easement. The owners of each lot on the Property shall have the benefit and use of a non-exclusive subsurface utility easement appurtenant to their lot under and beneath any Common Property for the purpose of connecting their lot with any public utility easement evidenced by the Plat or otherwise established on the Property. This easement shall be permanent, shall run with the land and shall encumber the Common Property upon any conveyancing or mortgaging of the same by the Association and may only be terminated upon the written consent of all lot owners and mortgagees of lots shown on the Plat. Any such utility easement exercised by a lot owner shall be required to use the most direct path across the Common Property from the lot to the public utility easement unless an alternate path would produce less damage or is otherwise required by the applicable utility company. To the extent that utility services to any lot (whether as the result of installation, repair, maintenance or replacement) inflicts any damage upon or otherwise disturbs the surface of the Common Property and improvements thereon, the utility company performing such work, or, in the absence of a responsible utility company which will restore the Common Property, the owner of the lot benefited, shall perform or pay to the Association on demand all amounts needed to restore the surface and improvements on the Common Property to the condition that existed immediately prior to the damage or disturbance occurring, reasonable wear and tear excepted.

## ARTICLE VII

### DECLARANT CONTROL PERIOD

Section 7.1 Right to Appoint. Declarant shall have the absolute right to appoint all members of the Board of Directors until the first to occur of: (i) the sale by Declarant of more than seventy-five percent (75%) of the improved lots located within the Property or (ii) three (3) years from the date that Declarant, or its successors or assigns in interest, complete the first conveyance of fee title to a lot on the Property with a completed residence to a residential purchaser (the first to occur being hereinafter called the "Record Date"). After the Record Date, the Association shall send out notice within ninety (90) days for the first meeting of members and the election of a Board of Directors, such first annual meeting to occur within four (4) months of the Record Date in accordance with the provisions of the Bylaws for the

Association. After the Record Date, Declarant may still vote one (1) vote for each lot still owned by Declarant.

Section 7.2 Prior to Record Date. Prior to the Record Date, Declarant shall appoint all the members of the Board who may, but need not, be employees of Declarant or owners of lots within the Property. In addition, prior to the Record Date, Declarant shall have the right from time to time to file of record in the Deed Records of Dallas County, Texas, such amendment or amendments to this Declaration as Declarant deems necessary and/or appropriate for the proper operation of the Association, the protection of the Property and the enforcement of this Declaration; provided, that Declarant may not take any action or *file* any amendment which would in any manner abridge, limit or void the tide of any owner to a lot within the Property or the lien of any lien holder on such lot or that would act to remove the substantive restrictions and protections offered each lot owner by this Declaration for the Property and the lots thereon.

## ARTICLE VIII

### BUDGETS AND BORROWING

Section 8.1 Annually. The Board of Directors shall prepare and approve at least forty-five (45) days [but not more than one hundred twenty (120) days] in advance of each fiscal year for the Association an annual budget in sufficient amount to meet the estimated operating expenses of the Association during the coming fiscal year. Upon approval of the annual budget, the Board shall mail out the notice of the annual assessment due from each member of the Association as computed under Article III hereof. If for any reason the budget as approved by the Board should be insufficient to meet the expenses and obligations of the Association during any fiscal year, the Board shall prepare and approve a supplemental budget and levy a special assessment on each member sufficient to meet the obligations and expenses of the Association for the balance of the fiscal year as authorized by Section 3.4 hereof.

Section 8.2 Prohibition on Borrowing. The Association shall not borrow money to meet its obligations and annual budget except upon the approval of a majority [fifty-one percent (51%)] and shall not mortgage the Common Property except upon the approval of seventy-five percent (75%) of the members of the Association eligible to vote, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

## ARTICLE IX

### INDEMNITY AND INSURANCE

Section 9.1 Association. The Association shall indemnify and hold harmless all owners of lots within the Property from and against any and all claims, liabilities, damages, penalties, losses, costs and expenses incurred, resulting from or in any way arising out of the maintenance, repair,

replacement, restoration, installation, operation and management of the Common Property by the Association, or the Association's failure to do so, unless any such claims, liabilities, damages, penalties, losses, costs and expenses are caused solely by the willful or negligent act or neglect of any such owner or owners, or their respective guests, agents, employees, tenants or invitees.

Section 9.2 Owners. Each owner shall indemnify and hold harmless the Association, the Board, all mortgagees and insurers and all other owners of any other lot within the Property from and against any and all claims, liabilities, damages, penalties, losses, costs and expenses incurred, resulting from or in any way arising out of any willful or negligent act or neglect of such owner, and his guests, agents, employees, tenants and invitees. Without limiting the generality of the foregoing indemnity, the cost and expense of repairs and replacements of any portion of the Common Property resulting from any such act or neglect by an owner or his guests, agents, employees, tenants and invitees shall be the responsibility of such owner who (or whose guests, agents, employees, tenants or invitees) neglects or willfully damages same. The Association may (but shall not be required to) cause such repairs and replacements to be made at such owner's sole cost and expense, and the cost thereof (plus interest from the date of payment by the Association until reimbursed at the interest rate from time to time set by the Board for delinquent assessments) may be specially assessed against such owner, which cost shall be payable on demand shall be secured by the lien and may be foreclosed as provided for in Article III hereof.

Section 9.3 Insurance. The Association shall maintain in force such policies of liability and property insurance as may be reasonable and prudent as determined by the Board in accordance with its obligations hereunder and as may be required by its Bylaws. Each owner shall be solely responsible for maintaining adequate insurance, including without limitation liability and property insurance, for such owner's lot and all improvements thereon.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

Section 10.1 Duration. This Declaration and the covenants, restrictions, charges and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, and every owner of any lot within any part of the Property, including Declarant, and their respective legal representatives, heirs, successors and assigns, for a term beginning on the date this Declaration is recorded and continuing through and including December 31, 2015, after which time the term of this Declaration shall be automatically extended for successive periods of five (5) years unless a change (the word "change" including additions, deletions or modifications thereto, in whole or in part, including any termination of the Declaration) is approved: (a) by a majority [fifty-one percent (51%)] of the total eligible votes of the membership of the Association as defined in Article II hereof, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of such meeting and (b) to the extent required by any applicable law, ordinance, rule or regulation approved by the appropriate governmental

agency, board, department or body having proper jurisdiction over such matters; provided, however, that: (x) no such change may terminate this Declaration or alter Articles I, II, III, W, V, VI or VIII or Section 10.2 hereof prior to December 31, 2015 except upon the approval of seventy-five percent (75%) of the total eligible votes of the membership of the Association voting in person or by proxy at a valid duly called meeting as set forth above nor shall any change be effective until one (1) year following the vote referred to above, nor shall any such change be effective prior to the recording of a certified copy of such resolution in the Deed Records of Dallas County, Texas and (y) no such change may terminate the obligation of the Association or the owners, upon termination of the Association, to maintain, care for, repair and keep up the Common Property in accordance with any valid and applicable law, ordinance, rule or regulation imposed by any applicable governmental entity, department, board or agency. Unless otherwise expressly stated in any recorded documents terminating this Declaration, the Sideyard Easements created under Section 4.1(f) hereof shall be permanent and shall not terminate with the termination of this Declaration but rather shall remain in full force and effect. Upon any termination of this Declaration, fee title to the Common Property shall vest in the then owners of all lots on the Property as tenants in common as provided in Section 6.2 hereof. In any such event, the owners of lots on the Property would then be jointly and severally liable for and obligated to see to the maintenance, care, repair and upkeep of the Common Property in compliance with all valid and applicable state and federal laws and ordinances or applicable regulations imposed by Dallas County or the City of Irving or any duly constituted board or agency thereof.

Section 10.2 Amendment. Subject to Section 10.1 above, this Declaration may be amended or terminated prior to December 31, 2015 by sixty-six percent (66%) and after December 31, 2015 during the final year of any five (5) year automatic renewals of this Declaration by fifty-one percent (51%) of the total eligible votes of the membership of the Association as defined in Article II hereof. Members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of such meeting; provided, that if at such time Declarant is the record owner of any lot, Declarant must consent thereto if such amendment or termination is to be effective prior to December 31, 1989. Any such amendment or termination shall become effective one (1) year following its approval when an instrument is filed for record in the Deed Records of Dallas County, Texas, with the signatures of the requisite number of the owners of lots within the Property (and the signature of Declarant if prior to December 31, 1989 and Declarant is the record owner of one or more lots on the Property).

Section 10.3 Enforcement. The Association and any member shall have the right (but not the duty) to enforce any of the covenants and restrictions set out in this Declaration. Enforcement of the covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any such covenant or restriction shall in no event ever be deemed a waiver of the right by the Association or any owner to do so thereafter.

Section 10.4. Action. Except as it is otherwise limited by the terms of this Declaration or the Bylaws, the Association may take any action that it is otherwise empowered to do at law

by majority vote of its members.

Section 10.5. Severability of Provisions. If any one or more of the provisions of this Declaration, or the applicability of any such provision to a specific situation, shall be held illegal, void, invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application legal, valid and enforceable, and the validity and enforceability of all other provisions of this Declaration and all other applications of any such provision shall not be affected thereby. If any illegal, void, invalid or unenforceable paragraph, section, sentence, clause or phrase of this Declaration cannot be modified so as to be legal, valid and enforceable, or a court of competent jurisdiction is unwilling to make such change, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed by Declarant irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 10.6 Notice. Wherever written notice to a member (or members) is permitted or required hereunder, such notice shall be given by mailing it to the member at the address of the lot on the Property for such member appearing on the records of the Association, unless such member has given written notice to the Association of a different address, in which event such notice shall be sent to the member at the address so designated. Each notice shall conclusively be deemed to have been given by the Association by placing same in the United States mail, properly addressed and postage prepaid, whether received by the addressee or not.

Section 10.7. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 10.8 Lots. Whenever the term "lot" or "lots" is used herein to designate any portion of the Property, such term shall be deemed to be followed by the words "or any portion thereof and "covered by the Plat" unless the context in which the word lot or lots is used clearly requires otherwise. It is the intention of this Declaration to bind and subject to the terms of this Declaration all of the Property and all subdivision, separations, combinations and replats of any lot or lots on the Property. In the event of any replat or the resubdivision of any lot(s), the voting rights of all members of the Association shall always be limited and equal to one vote for each lot as shown on the original Plat and no combination, replat or subdivision of any lot or lots shall ever reallocate the votes of the members from lots in such a way that any lot ever has less than one full vote.

EXECUTED as of the day and year first written above.

ATTEST: JEFFERSON PROPERTIES, INC.

*original signed*

*original signed*

\_\_\_\_\_  
B. Carl Klinke Secretary

\_\_\_\_\_  
J. Frank Miller, III President

THE STATE OF TEXAS   §  
                                  §  
                                  §  
                                  §  
                                  §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on January 16, 1986 by J. Frank Miller, III, President of Jefferson Properties, Inc., a Texas corporation, on behalf of said corporation.

*original signed*

\_\_\_\_\_  
Notary Public  
Notary's Printed Name Richard Early Danley, Jr.  
My commission expires 3-29-89

## EXHIBIT "A"

Lots 1-19 inclusive, Block 1; Lots 1-24 inclusive, Block 2; Lots 1-15 inclusive, Block 3, of Carpenter Estates Revised, an addition to the City of Irving, Texas, according to the Plat thereof recorded in Volume 86009 at Page 2080, Map Records, Dallas County, Texas, together with all other real property and any improvements thereon covered by said Plat, said real property being more particularly described by metes and bounds as follows:

BEING a 12.456 acre tract of land situated in the Jane Bean Survey, Abstract No.146 in the City of Irving, Dallas County, Texas, and being a portion of Carpenter Road Estates as recorded in Volume 37, Page 33 of the Deed Records of Dallas County, Texas (D.R.D.C.T.) and being more particularly described as follows;

BEGINNING at a 5/8 inch iron rod set in the easterly right-of-way line of Mac Arthur Boulevard (80 foot right-of-way), said iron rod being the southwesterly corner of a tract of land owned by the Irving Independent School District as recorded in Volume 5785, Page 657 (D.R.D.C.T.);

THENCE, along the northerly line of said Carpenter Road Estates, North 89°58'31" East, a distance of 931.12 feet to a 5/8 inch iron rod set for the northeasterly corner of said Carpenter Road Estates;

THENCE, along the easterly line of said Carpenter Road Estates, South 00°13'26" East, a distance of 127.39 feet to a 5/8 inch iron rod set for corner;

THENCE, DUE WEST a distance of 49.05 feet to a 5/8 inch iron rod set in a curve to the left from which the radius point bears South 78°18'37" East, a distance of 45.00 feet;

THENCE, along said curve to the left through a central angle of 11°54'49" and an arc length of 9.36 feet to a 5/8 inch iron rod set for the point of tangency and being in the westerly right-of-way line of New Haven Drive (50 foot right-of-way);

THENCE, along the westerly right-of-way line of said New Haven Drive, South 00°13'26" East, a distance of 473.60 feet to a 5/8 inch iron rod set in the southerly line of said Carpenter Road Estates and being in the northerly right-of-way line of Chisholm Trail (50 foot right-of-way);

THENCE, along the southerly line of said Carpenter Road Estates and the northerly right-of-way line of said Chisholm Trail, Due West a distance of 876.79 feet to a 3/8 inch iron rod found for the southwesterly corner of said Carpenter Road Estates and being in the easterly right-of-way line of said Mac Arthur Boulevard;

THENCE, along the westerly line of said Carpenter Road Estates and the easterly right-of-way line of said Mac Arthur Boulevard, North 00°37'42" West, a distance of 609.92 feet to the POINT OF BEGINNING and containing within these metes and bounds 12.456 acres or 542,580 square feet of land, more or less, and being subject to easements of record.

EXHIBIT "B"

All dimensions shown hereon are approximate

EXHIBIT "C"

	<u>LOT A</u>		<u>LOT B</u>	
<u>Block 1</u>	2		3	
	3		4	
	4		5	
	7		6	
	8		7	
	9		8	
	10		9	
	11		10	
	12		13	
	13		14	
	14		15	
	15		16	
	16		17	
	17		18	
 <u>Block 2</u>				
	2	14	1	15
	3	15	2	16
	4	16	3	17
	5	17	4	18
	6	18	5	19
	7	19	6	20
	8	20	7	21
	9	21	8	22
	10	22	9	23
	11	23	10	24
 <u>Block 3</u>				
	1		2	
	3		4	
	4		5	
	5		6	
	6		7	
	7		8	
	8		9	
	9		10	
	10		11	
	11		12	
	12		13	
	13		14	
	14		15	

See Exhibit "B" attached to this Declaration to identify the corresponding relationship between a Lot A, Lot B and a Sideyard Easement as determined by Exhibit "C".

EXHIBIT "D"