

96- 0172264

DECLARATION
OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
STONEGATE HILL AT WESTOVER HILLS,
UNIT 3, A PLANNED UNIT DEVELOPMENT
(PLATTED AS THE HEIGHTS AT
WESTOVER HILLS, UNIT 3,
A PLANNED UNIT DEVELOPMENT)

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THIS IS A COMPREHENSIVE LEGAL DOCUMENT WHICH PROVIDES FOR THE
IMPOSITION OF MANDATORY HOMEOWNER ASSESSMENTS. THIS DECLARATION IS
BINDING UPON ALL FUTURE OWNERS IN THIS SUBDIVISION.

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ARTICLE 1

RECITALS

1.1 Declarant desires to create a residential community with designated "Lots" and "Common Facilities" (as those terms are defined herein) for the benefit of the present and future owners of said Lots on the following described real property owned by Declarant, to wit:

THE HEIGHTS, UNIT 3, A PLANNED -UNIT DEVELOPMENT, now known as STONEGATE HILL -AT WESTOVER HILLS, UNIT 3, A PLANNED UNIT DEVELOPMENT, in the City of San Antonio, Bexar County, Texas, as shown on plat thereof recorded in Volume 9533 • Pages 33 of the Deed and Plat Records of Bexar County, Texas.

1.2 Declarant has subdivided the above-described real property as shown by the map and plat of such subdivision, which map and plat has heretofore been filed as the true and correct survey, map, and plat thereof, and which subdivision shall be effectively known as STONEGATE HILL AT WESTOVER HILLS, UNIT3, PLANNED UNIT DEVELOPMENT.

1.3 Declarant has deemed it desirable for the efficient preseNation of the values and amenities in said community. and in the subdivision known as STONEGATE HILL AT WESTOVER HILLS, UNIT 3, PLANNED UNIT DEVELOPMENT, to create an agency to which should be delegated and assigned the powers of maintaining and administering the Common **Facilities** and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and **charges** hereinafter created; and

1.4 Declarant desires to ensure the preservation of the values and amenities in said community and for the maintenance of said Common Facilities, and to this end desires to further sUbject the above-described real property, together with such additions as may hereafter be made thereto as herein provided, to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each of the owners thereof; and

1.5 STONEGATE HILL AT WESTOVER HILLS HOMEOWNERS ASSOCIATION, INC. has been incorporated under the laws of the State of Texas as a non-profit corporation for the purposes of exercising the functions aforesaid as to STONEGATE HILL AT WESTOVER HILLS, UNIT 3, PLANNED UNIT DEVELOPMENT, a residential subdivision, in Bexar County, Texas, as shown on plat recorded in Volume 9533, Pages 33 , Deed and Plat Records of Bexar County, Texas. and such other real property as may be annexed thereto and become subject to the jurisdiction of said Association; and Declarant desires to conform the restrictions on use of the herein described real property as necessary for the purpose of subjecting said property and the Owners thereof to the jurisdictions of said Stonegate Hill at Westover Hills Homeowners Association. Inc.

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1.6 Declarant declares that the property above described as constituting STONEGATE HILL AT WESTOVER HILLS, UNIT 3, PLANNED UNIT DEVELOPMENT shall be hereafter held, transferred, sold, conveyed, occupied, and enjoyed subject to the following covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, and shall hereafter be subject to the jurisdiction and assessments of Stonegate Hill at Westover Hills Homeowners Association, Inc.

1.7 Planned Unit Development. The Subdivision has been designated as a Planned Unit Development pursuant to Chapter 35 of the City Code of the City of San Antonio, Texas. The Subdivision Plat creates for use as such, subject to the limitations set forth herein, certain private streets and easements shown thereon, and such Subdivision Plat further establishes certain dedications, limitations, reservations and restrictions applicable to the Properties. . All dedications, limitations, restrictions and reservations' shawn on the Subdivision Plat are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adapted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant, conveying said property or any part thereof.

ARTICLE 2

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "IIACC," "Committee" or "Architectural Control Committee" shall mean the New Construction Committee or the Modifications Committee, whichever is applicable.

(b) "Articles" shall mean the Articles of Incorporation of Stonegate Hill at Westover Hills Homeowners Association, Inc., as they may, from time to time, be amended.

(c) "Association" shall mean and refer to Stonegate Hill at Westover Hills Homeowners Association, Inc., a Texas non-profit corporation, its successors and assigns as provided for herein.

(d) "Board of Directors" shall mean and refer to the governing body of the Association, the election and procedures of which shall be as set forth in the Articles of Incorporation and By-Laws of the Association.

(e) "Builder Member" shall mean such builders approved by Declarant for construction within the subdivision and who owns one or more Lots for construction of a residence for resale to others.

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(f) "Bylaws" shall mean the Bylaws of Stonegate Hill at Westover Hills Homeowners Association, Inc., as they may, from time to time, be amended.

(g) "Common Facilities" shall mean and refer to all property leased, owned, or maintained by the Association for the use *and* benefit of the Members of the Association. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: private streets, signs, fountains, statuary, parkways, medians, islands, common entry house and gates, tennis courts, landscaping, walls, bridges, safety lanes, trails, drainage easements, and other similar or appurtenant improvements.

(h) "Declarant" shall mean and refer to WH RESIDENTIAL DEVELOPMENT, LTD., its successors or assigns, including any bulk transferee of Lots unless such rights as successor Declarant are negated in writing in the recorded instrument of conveyance.

(i) "Living Unit" shall mean and refer to a single family residence and its attached or detached garage situated upon a Lot.

(j) "Lot" shall mean and refer to any of the plots of land, as shown on the Subdivision Plat.

(k) "Member" shall mean and refer to all those Owners who ~~are~~ members of the Association as provided herein.

(l) "Modifications Committee" shall be the Committee described in Section 4.3 of this declaration.

(m) "New Construction Committee" shall mean the Committee described in Section 4.2 of this ~~declaration~~.

(n) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot within the Properties, including contract sellers but excluding those having interest merely as security for the performance of an obligation.

(o) "Existing Property" shall mean and refer to the above described properties known as Stonegate Hill at Westover Hills, Unit 3

(p) "Additional Property" shall mean and refer to property which is added to the Existing Property pursuant to Article 7 of this Declaration or any Amended or Supplemental Declaration.

(q) "Subdivision Plat" shall mean and refer to the map or plat of STONEGATE HILL AT WESTOVER HILLS, UNIT 3, PLANNED UNIT DEVELOPMENT, filed for record in Volume 9533 , Pages 33 , Deed and Plat Records of Bexar County, Texas, and any

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amendment thereof upon filing of same for record in the Deed and Plat Records of Bexar County, Texas.

ARTICLE 3

HOMEOWNER'S ASSOCIATION AND ASSESSMENTS

3.1 MEMBERSHIP IN THE ASSOCIATION. Every person or entity who is a record ~~Owner~~ of a fee or undivided interest in any Lot which is sUbject to the jurisdiction of and to assessment by the Association shall be a member of the Association, provided, however, that any person or entity holding an interest in any such Lot or Lots merely as security for the performance of an obligation, shall not be a member. Membership and voting rights are appurtenant to, and inseparable from, ownership of the Lots.

3.2 VOTING RIGHTS. The association shall have two classes of voting membership:

Class A. Class A Members shall be all those owners as defined in Article 2(1) above with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by ~~Article~~ 2(1). When ~~more~~ than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall ~~be~~ exercised as they among themselves determine, but in no aevent shall more than one vote be cast with respect to any such Lot.

Class 8. The Class B Members shall be Declarant and Builder Members. The Class 8 Members shall be entitled to three votes for each Lot in which they hold the interest required by Article 2(e) above, provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class 8 membership; or

(b) On January 1,2015.

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From and after the happening of these events, whichever occurs earlier, the Class B ~~member~~ shall be deemed to be a Class A member entitled to one vote for each Lot in ~~which~~ it holds the interest required for membership, provided however, if at any time after the occurrence of subparagraph (a) above, Additional Property is annexed to the jurisdiction of the Association, then the Class B membership shall be restored until subparagraph (a) ~~occurs~~ again.

3.3 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot, 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 and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvement, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, and shall also be the personal obligation of the person who was the Owner of such property at the time the obligation accrued.

3.4 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members, and in particular, for the improvement, maintenance and operation of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Existing Property by the Members.

3.5 BASIS AND MAXIMUM OF ANNUAL ASSESSMENTS. The annual assessment for both improved and unimproved Lots shall be determined by the Board of Directors in the manner provided for herein after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made. The initial annual assessment for an improved Lot shall be prorated for the remainder of the calendar year in which begun if begun on other than January 1. The annual assessment for unimproved Lots shall be one-fourth (1/4) of the annual assessment for improved Lots. The maximum annual assessment for improved Lots and annual assessments for unimproved Lots may be increased by vote of the Members as provided herein below. A Lot shall be deemed to be an "improved Lot" when construction of a living Unit hereon is completed and closing of a sale thereof has taken place, or when the Living Unit is occupied as a residence, whichever first occurs. As provided in Article 5.16, the Board of Directors shall have the power to adjust assessments on consolidated Lots.

3.6 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments provided for above, the Association may levy, in any assessment year, a Special Assessment on improved Lots only, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Facilities, provided that any such assessment shall have the assent of two thirds (2/3) of the votes of the improved Lot owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all improved Lot owners at least thirty (30) days in advance which shall set forth the purpose of the meeting.

3.7 CHANGE IN BASIS AND MAXIMUM OF ANNUAL ASSESSMENT\$. Subject to the limitations stated above, the annual assessment may be adjusted by majority vote of the

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Board of Directors but shall not be increased by more than ten percent (10%) above that of the previous year without a vote of the membership. Any increase in the annual assessment of more than ten percent (10%) above that of a previous year shall require approval of two-thirds (2/3) vote of each class of Members voting at a meeting duly called for that purpose.

3.8 QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 6 AND 7. The quorum required for any action authorized hereinabove shall be as follows: At the first meeting called as provided above, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

3.9 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATE. The annual assessments provided for herein shall commence as to all Lots on such date as may be determined by the Board of Directors of the Association. The assessments for each calendar year shall become due and payable and shall be collected as the Board of Directors of the Association shall determine. The amount of the annual assessment shall be an amount which bears the same relationship to the annual assessment established by the Board of Directors as the remaining number of months in that year bear to twelve. When a Lot becomes an improved Lot, there shall be payable as of the first day of the month following the month when it becomes an improved Lot a sum equal to the difference between the annual assessment for unimproved Lots and the annual assessment for improved Lots, prorated over the balance of the year then remaining. The due date of any special assessment under the provisions hereof shall be fixed in the resolution authorizing such assessment.

3.10 DUTIES OF THE BOARD OF DIRECTORS. In December of each year, the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot for the following year and shall at that time prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner on reasonable notice. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time, furnish to any Owner liable for said assessment, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

3.11 EFFECT OF NON-PAYMENT OF ASSESSMENTS: THE LIEN; REMEDIES OF THE ASSOCIATION. All past due and unpaid assessments shall bear interest at the rate of eighteen percent per annum or the maximum interest allowed by law from the date due until the date paid. The Association shall be entitled to record a Notice of Lien or notice of unpaid

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assessment in the real property records for any assessment remaining unpaid more than thirty (30) days after the due date thereof. The Association shall be entitled to collect from each Owner the costs to the Association for the collection of any past due assessments or charges, including a reasonable fee for the preparation, recordation or release of any notice. If the Association retains an attorney to assist in the collection of an unpaid assessment, then that members inspection of the attorney's books and records shall not be a "proper purpose" pursuant to the Texas Non-Profit Corporation Act.

3.12 SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any valid purchase money or construction mortgage. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot. pursuant to such valid mortgage foreclosure or any proceeding in lieu thereof. shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

3.13 TITLE TO COMMON FACILITIES. The Declarant may retain the legal title to the Common Facilities until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same, but notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it will convey the Common Facilities to the Association, ~~not~~ later than two years after the filing of record of this Declaration. All amenities in the Common Facilities are subject to Declarant's final approval.

3.14 GATES. So long as Class B membership exists, (and provided that it has not previously transferred its rights in this section to the Association) Declarant reserves the legal title and control over all gates which it may construct on or about the Subdivision, as well as the authority, in sole discretion, to determine the hours, staffing and manner of operation. Nothing in this Declaration, or any other statement or communication by Declarant or the Association, shall constitute any representation or warranty by Declarant or the Association concerning the hours, staffing or manner of operation of the gates, nor concerning any security or safety protection which the gates may offer.

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3.15 MEMBERS' EASEMENTS OF ENJOYMENTS. Subject to the provisions of Section 16 and 17 of this Article, every Member shall have a common right and easement of enjoyment in and to the Common Facilities and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

3.16 EXTENT OF MEMBERS' EASEMENTS. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the rights and easements existing or hereafter created in favor of others as provided for in the Subdivision Plat.

(b) the rights of the Association, once it has obtained legal title to the Common Facilities, as provided in Section 14 above, to do the following:

- (1) to borrow money for the purpose of constructing or improving the Common Facilities and, in aid thereof, to mortgage said properties and facilities. in accordance with the Articles of Incorporation and Bylaws of the Association;
- (2) to take such steps as are reasonably necessary to protect the above-described properties and facilities against foreclosures;
- (3) to enter into one or more contracts or agreements for the maintenance or improvement of the common Facilities;
- (4) to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of the published rules and regulations of the Association or of this Declaration;
- (5) to assess and collect the assessments provided for herein or elsewhere and to charge reasonable admission and other fees for the use of the Common Facilities; and
- (6) to dedicate or transfer all or any part of the Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by a two-thirds (2/3) vote of the Members not voting by class.

3.17 USE RESTRICTIONS AFFECTING COMMON FACILITIES AND ADJUNCT PROPERTIES. The right of use of the Common Facilities shall be strictly subject to the following:

(a) No motorcycles, motorbikes or other motorized vehicles (except those used for maintenance, repairs and upkeep of the Common Facilities) shall be operated by any person under the age of 18 on any part of the drainage easements, streets, sidewalks or other Common Facilities owned by the Association or Declarant. The drainage easements shall be utilized only for walking, jogging, bicycle riding and such other uses as may be approved by the Board of Directors of the Association and the Association may prohibit or limit the use of any portion of the Common Facilities.

(b) No planting or gardening by Owners shall be permitted within the Common Facilities and no fences, hedges or walls or other obstructions shall be erected or maintained upon or over the Common Facilities, except such as are installed by Declarant in connection with the construction of the initial improvements thereon, or such as are subsequently approved by the Board of Directors of the Association.

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(c) No building or other structure of any type, including recreational structures, shall be built, placed or maintained on the Common Facilities except those constructed or placed, or permitted to be constructed or placed, by Declarant or the Board of Directors of the Association.

(d) The Association is empowered to establish additional use regulations relating to the Common Facilities as it may from time-to-time deem necessary to ensure the preservation and appearance of the Subdivision as a residential neighborhood and such rules and regulations shall, when promulgated, be in all respects binding on and enforceable against all Lot Owners, provided, however, no such additional rules or regulations shall in any manner revoke or relax any of the restrictions of use set forth in this section.

ARTICLE 4

ARCHITECTURAL STANDARDS

4.1 Approval Required; Procedures.

(a) No structure shall be placed, erected, or installed upon any Lot, no construction (Which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to Sections 9.2 and 9.3 below. Such improvements include, but are not limited to, the construction or installation of sidewalks, driveways, mail boxes, decks, patios, courtyardS, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to, and approved in writing by, the appropriate Architectural Committee as to the compliance of such plans and specifications with the Architectural Control Guidelines as may be published by the Board of Directors from time to time, including the harmony of external Architectural, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the appropriate Architectural Committee, and the other copy shall be returned to the Owner marked "approved", "approved with conditions as noted", or "disapproved". 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 the originally-approved plans and specifications. The Architectural Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

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(b) Following approval of any plans and specifications by the appropriate Architectural Committee, representatives of the appropriate *Architectural* Committee shall have the right, but not the obligation, during reasonable hours to enter upon and inspect any Lot with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the appropriate Architectural Committee shall determine that such plans and specifications have not been approved or are not being complied with, the appropriate Architectural Committee 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 the event the appropriate Architectural Committee fails to approve or disapprove in writing any proposed plans and specifications within sixty (60) days after such plans and specifications shall *have* been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with this Declaration. Upon approval of plans and specifications, no further approval under this Article shall be required with respect thereto, unless such construction has not SUBstantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Disapproval of plans and specifications by the Architectural Committee may be based upon any ground which is consistent with the objects and purposes of this Declaration as defined in Architectural Control Guidelines which shall be promulgated by the Board of Directors, from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

(c) The Board of Directors or the Architectural Committee may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application. All Dwelling Units constructed on any portion of the Property shall be Architecturally by and built in accordance with the plans and specifications of a licensed architect or licensed building Architecturally. This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Property by or on behalf of the Association. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Committee. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or SUBJECT to annexation to this Declaration. Because architectural trends, neighborhood character and general standards of taste change with the times, the New Construction Committee and the Modifications Committee shall not be bound by prior decisions of the Committees. The granting of approval on prior occasions is no assurance that the same or similar plans will be approved on future requests.

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4.2 New Construction Committee. The New Construction Committee (NeC) shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Property. Until one hundred (100%) percent of the Additional Property has been developed and conveyed to purchasers

in the normal course of development and sale, the Declarant retains the right to appoint all members of the NCC, who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors may merge the NCC with the MC (defined below), or shall appoint the members of the NCC who shall serve and may be removed at the discretion of the Board of Directors. The members of the NCC may include architects, engineers and other persons who are not Members of the Association.

The NCC shall prepare and, on behalf of the Board of Directors, shall promulgate Architectural and develop guidelines governing construction within the Property, which shall include application and review procedures to be followed in submitting an application for approval ("Architectural Control Guidelines"). The Architectural Control Guidelines shall be those of the Association, and the NCC shall have sole and full authority to modify and to amend them from time to time without the consent of any Owner. The NCC shall make the Architectural Control Guidelines available to Owners who seek to engage in development of or construction upon all or any portion of the Property and such Builders and Owners shall conduct their operations strictly in accordance therewith. In the event that the NCC fails to approve or disapprove plans submitted, or to request additional information reasonably required, within forty-five (45) days after submission thereof, the plans shall be deemed disapproved.

4.3 Modifications Committee. The Board of Directors shall also establish a Modifications Committee (MC) to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. As long as the Declarant has the power hereunder to appoint the members of the Board of Directors, a minimum of one (1) member of the MC shall be, at the discretion of Declarant, an individual designated by the Declarant. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC shall have exclusive jurisdiction after the initial sale from the Builder to an Owner over modifications, additions, or alterations made on any lot or to any Dwelling Unit and the open space, if any, appurtenant thereto; provided, however, the MC may delegate this authority to the Board or other committee of the Association. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. Notwithstanding the above, the NCC shall have the right to veto any action taken by the MC which the NCC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the NCC.

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The Modifications Committee shall promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with those of the NCC. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations shall be submitted to the MC for approval as to quality of workmanship and Architectural and as to harmony of external Architectural with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a Living Unit, or to

paint the interior of a Living Unit any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Living Unit visible from outside the Living Unit shall be subject to approval hereunder. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

4.4 No Waiver of Future Approvals. The approval of either the Nee or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

4.5 Variance. The Architectural Committee may authorize variances from compliance with any of its guidelines and procedures 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: (a) be effective unless in writing; (b) be contrary to the restrictions set forth in the body of this Declaration; or (c) estop the 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. No request for a variance shall be considered if it affects the rights of adjoining Owner, unless affected Owner has granted written consent to the requested variance. Additionally, the Architectural Committee shall not be obligated to grant a similar variance as a result of granting the same or similar variance in the past.

4.6 Architectural Control Guidelines. The Architectural Committee is authorized and empowered to consider all aspects of dwelling construction, construction of other improvements and the location, quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the reasonable opinion of the Architectural Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Properties. Also, the Architectural Committee is permitted to consider technological advances in Architectural and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Architectural Committee. The Architectural Committee may, from time to time, publish and promulgate Architectural Control Guidelines which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. The Architectural Control Guidelines shall supplement this Declaration and are incorporated herein by reference. The Architectural Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of this Declaration. It is the intent of Declarant that this Declaration and any Architectural Control Guidelines issued by the Architectural Committee promote harmonious Architectural throughout the Properties. However, approval of the plans and specifications by the Architectural Committee and compliance with the Architectural Control Guidelines does not insure compliance with the building code and other restrictions imposed by applicable governmental authorities.

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4.7 Landscaping Approval. To preserve the aesthetic appearance of the Property, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed on a Lot by any Owner unless and until the plans therefor have been submitted to and approved in writing by the appropriate Architectural Committee. The provisions of this Article regarding time for approval of plans, right to inspect, right to enjoy and/or require removal, and so forth shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Weather permitting, each Residence shall be fully landscaped within ninety (90) days from the date the Residence comes into existence.

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

ARTICLE 5

LAND USE REGULATIONS

5.1 RESIDENTIAL PURPOSES ONLY. All land included within the Existing Property shall be used for "residential purposes" only, either for the construction of private single-family residences, including an enclosed private garage for not less than two (2) automobiles, or as part of the Common Facilities; provided, however, that only one such private single-family residence may be constructed, or otherwise placed upon anyone Lot. The terms "residential purposes" as used herein shall hold and construed to exclude any business, commercial, industrial, apartment house, hospital, clinic and/or professional uses, and such excluded uses are hereby expressly prohibited subject solely to the use by each Builder Member of residences within the Existing Property as temporary sales offices and model homes for the display and sale of Lots within the Existing Property and no others.

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This restriction shall not, however, prevent the inclusion of permanent living quarters for domestic servants or to allow domestic servants to be domiciled with an owner or resident.

5.2 STORM WATER POLLUTION PREVENTION PLAN. Prior to beginning any phase of construction on any lot in Stonegate Hill at Westover Hills Unit 3, Planned Unit Development the builder or lot owner shall comply with the provisions of the Storm Water Pollution Prevention Plan established by the Environmental Protection Agency.

5.3 STORAGE OF BUILDING MATERIALS. Building materials placed on Lots prior to commencement of improvements must be kept in a neat, clean and orderly condition. No materials may be placed on the street or ~~between~~ the curb and the property line.

5.4 MODEL HOMES. Declarant and the ACE may require different restrictions typical to model home areas for features including but not limited to fencing, flags, signage, driveways, parking, construction completion, garage offices and sidewalks, provided such restrictions are typical of and limited to the model home areas of the Existing Property.

5.5 CONSTRUCTION AND SALES PERIOD. During the construction and sales period of the initial Living Units, Builder Members or Declarant may erect and maintain such structures as are customary in connection with such construction and sale of such property, including, but not limited to a business office, storage areas, sign, model units, and sales office. All temporary construction and sales structures shall be aesthetically compatible with the subdivision development as determined by the Committee, and may only be located within the Existing Property for a period not exceeding two (2) years, unless written approval of the ACE is obtained, which approval will not unreasonably be withheld.

5.6 BUILDING MATERIALS. The exterior walls of all residential buildings, and the lower story of all two-story residential buildings, shall be constructed with masonry, rock, stucco, brick, or brick or masonry veneer in such percentage or more of the total exterior wall area as is determined by the ACC, which may be less than 100%. Window and door openings shall be included as masonry. Notwithstanding the foregoing, the Architectural Control Committee is empowered to waive this restriction, if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood. Wall materials used on all Lots shall be restricted to those types and colors of bricks approved by the Architectural Control Committee.

5.7 ROOFING MATERIALS. Roofing shall be either slate, tile, factory fire-treated wood (if permitted by the City of San Antonio), tarnished metal with standing seams, or composition or fiberglass dimensional shingles, provided that any composition or fiberglass roofing shall be 240 pounds or more. The Architectural Control Committee shall have the discretion to approve other roof treatments and materials if the form utilized will, in its sole discretion, be harmonious with the surrounding homes and Subdivision as a whole.

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5.8 FENCES. No fence or wall or hedge shall be built or maintained forward of the front wall line of the main structure, not including decorative walls or fences which are part of the architectural design of the main structure, and which are not to be built or maintained nearer than the building setback line of any Lot, unless otherwise approved in writing by the Architectural Control Committee.

(a) Fences constructed on any Lot in this subdivision shall be of the following four types:

- (1) cedar wood slats not to exceed six inches (6") in width; or
- (2) all masonry which matches the house; or
- (3) a combination of simple wrought iron bars and matching masonry; or
- (4) a combination of masonry and cedar wood slats not to exceed six inches (6") in width.

(b) All other fences shall be of the three types above described or shall be wood composed of one inch by not more than six inches (1" X 6") wide, six feet (6') tall, vertical cedar planks, without gaps between planks, with the tops either level or notched "dog-ear" style.

(c) All wooden fences visible from a street shall be constructed facing the street and without any framing visible from the street.

(d) The Architectural Control Committee is empowered to waive the aforesaid composition requirements for fences and the aforesaid height or setback limitation in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept, design or material, and the resulting fence, decorative wall and/or retaining wall (Whichever is applicable) will not detract from the general appearance of the neighborhood.

(e) No fence, wall, or hedge or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner Lot within the triangular areas formed by the extension of curb lines and a line connecting them at points twenty-five feet (25') from the intersection of the extended curb lines into the street. No structures or landscape material over three and one-half feet (3-1/2') tall shall be allowed in this inscribed triangle.

5.9 DRIVEWAYS AND SIDEWALKS. Driveways, entry walks and sidewalks on each residential Lot may be constructed of concrete or any other finish approved by the ACC. Placement of sidewalks may vary from the distance from the curb in order to save trees, however, any variance is subject to approval of the Architectural Control Committee. All other placement, width, materials and finishes must be to City of San Antonio specifications and approved in writing by the ACC. The driveway turnout shall be constructed to specifications of the City of San Antonio and in such manner as to provide an attractive transitional radius from the curb and gutter into the driveway entrance and shall prevent escape of drainage water from the street onto any Lots. Driveways and sidewalks

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must be shown on the site plan submitted for approval of the Architectural Control Committee. Asphalt driveways and sidewalks are specifically prohibited. All sidewalks, crossways, and driveway approaches shall comply with City of San Antonio specifications, including handicapped access. Any concrete spilled, poured or washed on a street must be immediately removed leaving the street clean and unstained. The Owner or Owners of each Lot shall also be the Owner or Owners of the portion of a sidewalk which traverses his Lot, and shall, by acceptance of a deed to his Lot or Lots, covenant to keep such portion in good repair. Each Owner shall execute any and all instruments necessary to grant an easement to the public for the use of the sidewalks.

5.10 TEMPORARY STRUCTURES. No structure of a temporary character (sales structure, trailer, travel trailer, tent, shack, garage, barn or other outbuildings) shall be used on any Lot at any time as a residence, either temporarily or permanently. No trailer, camper, recreational vehicles, or similar vehicles shall at any time be parked in view from other properties or connected to utilities situated within a Lot. No dwelling previously constructed elsewhere may be moved onto any Lot in the subdivision controlled by these covenants. This covenant specifically includes mobile homes or the use of a mobile home in which the axle and wheels have been removed and placed upon a concrete slab, which said mobile home is hereby specifically prohibited as a residence, either temporarily or permanently, and further, specifically includes a mobile home upon which wheels have been (left attached. Sales offices and construction offices used by the Declarant or Builder Members are permitted but are subject to A/C approval as to number, type, location and ultimate use.

5.11 RESTRICTIONS ON LOTS. All Lots in the subdivision shall be used for residential purposes or as part of the Common Area. No residential building shall have incomplete exterior brickwork or painting, or landscape grass, for more than six (6) months after construction has commenced. Temporary use may be made of a house for a Builder Member's sales office, which shall be permitted until such house is sold, not to exceed thirty-six (36) months in total from time of completion, provided such use is approved in writing by Declarant.

5.12 GARAGES. A garage able to accommodate at least two (2) full-sized automobiles must be constructed and maintained for each Living Unit. Each driveway must accommodate two vehicles in front of the garage for off-street parking requirements. Rear detached garages shall be permitted provided they are constructed in compliance with the requirements of these covenants and the specifications of the City of San Antonio. No garage shall be permanently enclosed for conversion to any other use. Open carports are not permitted, unless special design circumstances warrant their use, in which case permission must be obtained in writing from the Architectural Control Committee.

5.13 MAXIMUM HEIGHT. No building or structure erected, altered or placed on, within or in the Properties shall exceed forty-five feet (45') in height (measured from the top of the foundation to the topmost part of the roof) nor be more than two and one-half (2-1/2) stories in height, provided however, that all applicable ordinances, regulations, and statutes

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with respect to the maximum height of buildings and structures shall, at all times, be complied with.

5.14 MINIMUM AREA. The living area of each residence constructed on a Lot shall contain the minimum, contiguous square feet of living space as determined by the ACC, such square feet being exclusive of open or screened porches, terraces, patios, driveways, carports, garages and living quarters for domestic servants separated or detached from the primary living area.

5.15 BUILDING SETBACKS. Unless otherwise approved by the Architectural Control Committee, the minimum front setback shall be twenty feet (20') for all structures, the rear setback shall comply with applicable City of San Antonio ordinances, and sideyards shall be a minimum of five feet (5') on each side.

5.16 LOT CONSOLIDATION. Any Owner owning two or more adjoining Lots or portions of two or more such Lots may, with the prior approval of the Architectural Control Committee, consolidate such Lots or portions thereof into a single building site for the purpose of constructing one residence and such other improvements as are permitted herein, provided, however, that no such building site shall contain less than six thousand (6,000) square feet of land. Any consolidated Lot shall comply with all lawful requirements of any applicable statute, ordinance or regulation. On application by an Owner, the Board of Directors may adjust the assessments on a consolidated Lot to an amount not less than the full assessment rate for a single Lot. Absent such adjustment, a consolidated Lot shall bear the full assessment rate therefore applicable to all Lots which are not consolidated.

5.17 OUTBUILDING REQUIREMENTS. Every outbuilding, inclusive of such structures as a detached garage, storage building, gazebo, spa, greenhouse or children's playhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. All such outbuildings shall be Subject to approval of the Architectural Control Committee. In no instance shall an outbuilding exceed one (1) story in height, nor shall the total floor area of outbuildings other than a detached garage exceed ten percent (10%), individually or in the aggregate, of the floor area of the main dwelling.

5.18 SIGNS. No signs, banners, or pennants of any kind shall be displayed to the public view on any single-family residential Lot except one (1) professional sign of not more than nine (9) square feet advertising the property for sale or rent. Signs used by the developer or builders to advertise Lots or homes within the Properties during the construction and sales period shall be permitted, irrespective of the foregoing. Signs advertising subcontractors or suppliers are specifically prohibited. The sign may state only the name and phone number of the seller and/or the seller's agent. The Architectural Control Committee shall have control over all the wording, design, appearance, size, quantity, and location of all signs. Except for sale or rental signs adhering to the standards of the first sentence of this Article, all signs within the Properties shall be subject to the prior written approval of the ACC.

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5.19 LOT MAINTENANCE. Grass, weeds and vegetation on each Lot shall be kept mowed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from the property and replacements of equal quality or value promptly installed. Lawns must be properly maintained and fences must be repaired and maintained and no objectionable or unsightly usage of Lots will be permitted which is visible to the public view. Building materials shall not be stored on any Lot except when being employed in construction upon such Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from such Lot. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements or any of them, such default continuing after ten (10) days written notice thereof, Declarant, or its assigns, or the Association, may without liability to Owner or any occupants, but without being under any duty to do so, in trespass or otherwise, enter upon said Lot, cut or cause to be cut, such weeds and grass and remove or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work, plus a reasonable administrative charge and for reasonable attorney's fees. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the Lot to pay such statement immediately upon receipt thereof. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due, and may be enforced as fully as if it were an unpaid annual or special assessment.

5.20 LANDSCAPING. All front yards and side yards on all Lots, up to the wing wall that extends from the side of the house to the side property line, must be sodded within three months after occupancy of the house. Side yards on corner lots must be sodded the full length of the property line adjacent to the street. After sodding, all yards must be maintained with grass or landscaping in a neat and well mown condition, free of unsightly weeds and overgrowth. Decorative ground cover rock in the front and side yard may be used in lieu of grass but may not exceed fifty percent (50%) of the total area of the front and side yard. No oak, elm, or pecan trees larger than eighteen inches (18") in diameter may be removed without written ACE approval. EACH OWNER IS ADVISED THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES AS TO THE LIFE EXPECTANCY, VITALITY OR FITNESS FOR INTENDED PURPOSE OF ANY TREES OR SHRUBS LOCATED ON THE PROPERTIES.

5.21 WATER AND SEWAGE SYSTEMS. No individual water supply system or sewage disposal system shall be permitted on any Lot, including, but not limited to, water wells, cesspools or septic tanks.

5.22 VEHICLES. No trailer, motor home, tent, boat, recreational vehicle, travel trailer, or any truck larger than a three-quarter (3/4) ton pick-up or wrecked, junked or wholly inoperable vehicle shall be kept, parked, stored or maintained on any portion of the front yard in front of the building line of the permanent structure nor shall be kept, parked, stored or maintained on other portions of the Lot for a period more than twenty-four (24) hours, unless they are in an enclosed structure or in a screened area which prevents the view

thereof from adjacent Lots and streets. No dismantling or assembling of an auto, trailer, motor harne, tent, boat, recreational vehicle, travel trailer, any truck or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. No commercial vehicle bearing commercial insignia or names shall be parked an any lot except within an enclosed structure or a screened area which prevent such view thereof from adjacent Lots and streets, unless such vehicle is temporarily parked for the purpose serving such Lot.

5.23 PARKING. Off-street parking shall be provided by the Owner of each Living Unit for all vehicles in a location screened from view from the street and from the other Lots. On street parking, except by visitors, is prohibited.

5.24 GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary containers, whether arranged for alley pickup or street pickup. No trash, ashes or other refuse may be thrown or dumped on any vacant lot, park, street, right-of-way, or drainage area in the Properties. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept. placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but shall be removed from view before the following day.

5.25 ANIMALS. No sheep, goats, horses, cattle, swine, poultry,snakes, livestock, or other animals of any kind shaH ever be raised, kept, bred, or harbored on any portion of the Properties, except that dogs, cats, or other common household pets (not to exceed a total of three (3) adult animals) may be kept, provided that they are not kept, bred, or maintained for any commercial purposes and provided further that such common household pets shall at all times, except when they are confined within the boundaries of a private single-family residence or Lot upon which same is located, be restrained or controlled by a leash, rope, or similar restraint or a basket, cage, or other container.

5.26 OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil, gas or flUids may be maintained on any lots above the surface of the ground.

5.27 COMMUNICATIONS ANTENNAE. No radio, citizen band or otherwise, or television aerial wires or antennae shall be maintained on any portion of any Lot, except those which are fully enclosed within the structure of the Living Unit. No microwave or other satellite dishes, antennas, receivers, or transmitters shall be placed on any Lot without the prior written approval of the Architectural Control Committee. Solar apparatus, if used, must be installed in a location not visible from the street, any Rights-of-Way or other Parcels or

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portions thereof, and must be approved by the Architectural Control Committee before erection.

5.28 NUISANCES. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

5.29 ADVERSE CONDITIONS. No Owner or occupant shall perform any work that will impair the structural soundness or integrity of another Living Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Living Units or their Owners or residents.

5.30 EXTERIOR LIGHTING. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property (except reasonable security or landscape lighting that has approval of the Architectural Control Committee).

5.31 EXTERIOR NOISE. No exterior speakers, horns, whistles, bells or other sound devices (except security devices such as entry door and patio intercoms used exclusively to protect the Lot and improvements situated thereon) shall be placed or used upon any Lot.

5.32 ATHLETIC FACILITIES. Tennis court lighting *and* fencing shall be allowed only with the approval of the Architectural Control Committee. Basketball goals, or backboards, or any other similar sporting equipment of either a permanent or temporary nature shall not be placed within forty feet (40') from the front property line of any Lot in the subdivision or where same would be visible from an adjoining street or Lot, without the prior written consent of the Architectural Control Committee. The Architectural Control Committee shall have the authority to establish guidelines for the placement and design of basketball goals and no basketball goal shall be kept or maintained within sight of any street except in accordance with any such guidelines established.

5.33 ADDITIONAL LAND USE REGULATIONS. The Association is empowered to establish ~~additional~~ land use ~~regulations~~ relating to the Existing Property, both on Lots and the Common Facilities (including subdivision streets) as it may from time-to-time deem necessary to ensure the preservation and appearance of the Subdivision as a residential neighborhood and such rules and regulations shall, when promulgated, be in all respects binding on and enforceable against all Lot Owners, provided, however, no such additional rules or regulations shall in any manner revoke or relax any of the restrictions of use set forth in this section.

ARTICLE 6

EASEMENTS

6.1 EASEMENTS. Easements for installation and maintenance of utilities and

drainage facilities are reserved as shown on the recorded plat. Within these easements, if any, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities of, in the case of drainage easements, which may change the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all improvements in such area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. All drainage on Lots must be approved by the Architectural Control Committee.

6.2 SUBDIVISION WALLS. An easement for construction, reconstruction, repair, and maintenance of any subdivision entry wall, monument, or sign, now or hereafter erected on a Lot, is hereby reserved to Declarant and the Association upon and across each such Lot. No Owner of a Lot on which a subdivision entry wall, monument, or sign is placed shall do or permit any act which damages, defaces, or alters such wall, monument, or sign or obscures the same from view of any adjoining street. Any vegetation growing outside of a subdivision entry wall which borders the rear of any lot in Stonegate Hill at Westover Hills shall be maintained by the Association. Vegetation growing between the subdivision entry wall and the adjoining street along the side of any corner lot shall be maintained by the Lot Owner in a neat, orderly and trimmed condition, failing which, Declarant and/or the Association may enter on the Lot for such purposes and at the expense of the Owner.

6.3 MAINTENANCE AND ACCESS EASEMENTS. There is hereby created in favor of all easement owners, Declarant, the Association, and their assignees, a right of ingress or egress across, over, and under the Properties for the purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, electricity, gas, and appurtenances thereto, and to repair, correct, replace, or maintain any wall, fixture, light, or other structure or item constituting part of the Common Facilities or required or permitted to be maintained under the terms hereof or to correct or remove any condition prohibited under the terms hereof.

6.4 WAIVER OF LIABILITY. Neither the Declarant nor the Architectural Control Committee nor any member of the Committee shall be liable for any damage done by any utility company or their assigns, agents, employees or servants, using any easements now or hereafter in existence, whether located on, in, under, or through the Properties, to fences, shrubbery, trees or flowers or other property now or hereinafter situated on, in, under, or through the Properties. No provision hereof related to placement or nature of structures or conditions on a lot, nor the approval thereof, express or implied, by the Declarant or the Committee shall affect the rights of easement owners nor enlarge the rights of Lot Owners with regard to the construction or maintenance of improvements or conditions within an easement area.

6.5 DRAINAGE EASEMENTS. Easements for drainage throughout the subdivision are reserved as shown on the Subdivision Plat, such easements being depicted thereon as "drainage easements." No Owner of any lot in the subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a

manner that would *divert*, increase, accelerate or impede the natural flow of water over and across such easements. More specifically and without limitation, no Owner or resident of a Living Unit *may*:

(a) alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the *original* environment of such easements;

(b) alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without the *prior* written approval of the Architectural Control Committee and the City of San Antonio Drainage Engineer;

(c) construct, erect or install a **fence** or other structure of any type or nature within or upon such drainage easements;

(d) permit storage, either temporary or permanent, of any type **upon** or within such drainage easements; or

(e) place, store or permit to accumulate trash, garbage, leaves, limbs or other debris *within* or upon the drainage easements, either on a temporary or permanent basis.

6.6 COMPLIANCE BY OWNER. The failure of any Owner to comply with the provisions of this Article shall in no event be deemed or construed to impose liability of any nature on the Architectural Control Committee and/or Declarant, and such Committee and/or Declarant shall not be charged with any affirmative duty to police, control or enforce such provisions. The drainage easements provided for in this Article shall in no way affect any other recorded easement in the subdivision.

6.7 OVERHANG EASEMENTS. Each Lot shall be subject to an easement five feet (5') wide for encroachments created by construction, settling and overhang of structures constructed by third parties.

ARTICLE 7

ANNEXATION AND AMENDMENT

7.1 ADDITION TO EXISTING PROPERTY. Additional lands **may** become subject to this Declaration in the following manners:

(a) Additions by Declarant. The Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration, and without the consent of Members, additional properties in future stages of the development, and within ten (10) years from the date of this instrument; provided that such additions lie within the area described on Exhibit

lib" attached hereto and incorporated herein by reference. Declarant, its successors and assigns, shall not be bound to make any additions to the Existing Property. Any additions authorized under this and the succeeding subsections shall be made by filing of record a Declaration of Covenants, Conditions and Restrictions or similar instrument with respect to the additional property which shall extend the general scheme of the covenants and restrictions of this Declaration to such property, and the execution thereof by the Declarant shall constitute all requisite evidence of the required approval thereof. Such document may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands and are consistent with the overall development. The document may contain different classes of membership and/or land uses. In no event, however, shall any such instrument be construed so as to revoke, modify or add to the covenants established by this Declaration as they are applicable to the Existing Property.

(b) Other Additions. The owner of any property who desires to add to the scheme of this Declaration and to Subject it to the Jurisdiction of the Association, may make written submission therefor to the Association together with the following:

- (1) The proposed property shall be described by size, location, proposed land use, and general nature of proposed private improvements;
- (2) The proponent shall describe the nature and extent of common facilities to be located on the proposed property and fully describe any mortgage debt related to the common facilities or other debt which he seeks the Association to assume;
- (3) The proponent shall state that the proposed additions if made will be subjected to the general scheme of this Declaration and all Association assessments.

Upon such submission and Subject to the Association's later review and approval of a proposed form of Declaration of Covenants, Conditions and Restrictions for the proposed property, the Association shall vote by class on the proposal. Two-thirds (2/3) approval of the total votes of each class of membership shall be required for approval. If the proposed property shall be approved for addition to the jurisdiction of the Association, such addition shall be complete upon the proponent's filing of record a Declaration of Covenants, Conditions and Restrictions or similar instrument in form approved by the Board of Directors of the Association and executed by said Board of Directors or one or more authorized officers of the Association.

(c) ANNEXATION OF ADDITIONAL USES. Subject to compliance with the requirements of this Article, this Declaration allows the annexation of additional land which may be used for commercial, multi-family or other purposes.

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7.2 DURATION. This Declaration shall remain in force and effect until January 1, 2015, at which time, and each tenth anniversary thereafter, this Declaration shall be automatically renewed for a period of ten years unless the Owners of seventy-five percent (75%) of the Lots shall file a written agreement to abandon same.

7.3 AMENDMENT BY DECLARANT. Declarant reserves the right in its sole discretion to amend, alter, delete, or remove these restrictions without the consent of Owners so long as Class B membership exists, where such amendment, alteration, deletion or removal is in the best interests of the Owners, as determined by Declarant in its sole discretion. The sale restriction on Declarant's ability to amend the Declaration in this fashion is that the amendment must not be illegal or against public policy.

7.4 AMENDMENT BY OWNERS. This Declaration may be amended by written instrument executed by the Owners of seventy-five percent (75%) or more of the Lots, provided that no amendment prior to January 1, 2014, shall be effective until approved and executed by Declarant and filed of record in the Official Public Records of Real Property of Bexar County, Texas.

ARTICLE 8

ENFORCEMENT

8.1 BREACH BY OWNER. The failure of any Owner or tenant to comply with any restriction or covenant will result in irreparable damage to Declarant and other Owners of Lots in the Subdivision; thus the breach of any provision of this Declaration may not only give rise to an action for damages at law, but also may be made the subject of an action for injunctive relief and/or specific performance in equity in any court of competent jurisdiction. In the event enforcement actions are instituted and the enforcing party recovers, then in addition to the remedies specified above, court costs and reasonable attorney's fees shall be assessed against the violator.

8.2 REMEDIES. in addition to the remedies for enforcement provided for elsewhere in this Declaration, the violation or attempted violation of the provisions of this Declaration, or any amendment hereto, or Rules and Regulations promulgated by the Board of Directors, by an Owner, his family, guests, lessees or licensees shall authorize the Board (in the case of all of the following remedies) or any Owner (in the case of the remedies provided in (d) below), to avail itself of any one or more of the following remedies:

- (a) The imposition of a special charge not to exceed Two Hundred (\$200.00) Dollars per violation, or
- (b) The suspension of Owner's rights to use any Association property for a period not to exceed thirty (30) days per violation, plus attorney's fees incurred by the Association with respect to the exercise of such remedy, or

(c) The right to cure or abate such violation, including the right to enter any Lot upon which such violation exists without liability for trespass, and to charge the expense thereof, if any, to such Owner, plus attorney's fees incurred by the Association with respect to the exercise of such remedy, or

(d) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court costs.

8.3 WRITEN NOTICE. Before the Board invokes the remedies provided in Subparagraphs (a), (b), (c), and (d) above, it shall give written notice of such alleged violation to Owner, and shall provide the Owner the opportunity to respond. If, after the response, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Declarant, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

8.4 LIEN AGAINST OWNER. All charges assessed against an Owner pursuant to this Article shall constitute a continuing lien upon the Lot of such Owner as fully as if such charge were an unpaid annual or special assessment.

ARTICLE 9

MISCELLANEOUS

9.1 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.

9.2 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. ALL ACTS REQUIRED OR PERMITTED TO BE PERFORMED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS, AND IT IS AGREED THAT ANY ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HERewith SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION SITTING IN BEXAR COUNTY, TEXAS.

9.3 INTERPRETATION. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible to more than one or conflicting

interpretations, then the interpretation which is more nearly in accordance with the general purposes and objectives of this Declaration shall govern.

9.4 OMISSIONS. If any punctuation, word, clause, sentence, or provisions necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

9.5 GENDER AND GRAMMAR. The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions here apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.


9.6 ADDITIONAL INFORMATION. Architectural Design Guidelines for the Subdivision, Rules and Regulations of the Association, and the other documents and information which may affect an Owner or prospective Owner may be implemented by the ACE, the Association or the Declarant. Each Owner and prospective Owner is advised to carefully examine each of such documents in addition to this Declaration to determine his rights and obligations as an Owner.

9.7 NOTICE. Any notice, report, demand or other instrument authorized or required to be given or furnished shall be in writing and shall be given or furnished when addressed to the party intended to receive the same and delivered at such address, or two (2) days after same is deposited in the United States mail by first class mail, certified with return receipt requested.

EXECUTED effective the 21st day of JUNE, 1995.

WH RESIDENTIAL DEVELOPMENT, LTD.,
a Texas limited partnership

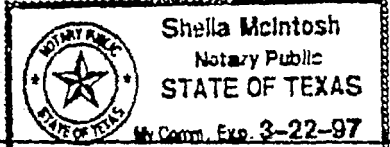
By: Perry Builders, Inc.,
a Texas Corporation,
its General Partner

By: 
John D. Hutchinson, President

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STATE OF TEXAS §
 COUNTY OF HARRIS §

This instrument was acknowledged before me on the 21st day of JUNE, 1995, by JOHN D. HUTCHINSON, President of Perry Builders, Inc., a Texas corporation, General Partner of WH RESIDENTIAL DEVELOPMENT, LTD., a Texas limited partnership, on behalf of said corporation and partnership.



Sheila McIntosh
 Notary Public, State of Texas

Impri
 Date of Expiration of Commission

AFTER RECORDING RETURN TO:

John R. Krugh
 WH RESIDENTIAL DEVELOPMENT, LTD.
 9000 Gulf Freeway
 Suite 300
 Houston, TX 77017

OR:STONE3
 5/95

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Any provision herein which restricts the sale, rental, or use of the described real property because of race is invalid and unenforceable under Federal Law STATE OF TEXAS, COUNTY OF BEXAR. I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

NOV 14 1996



Gerry Rickhoff
COUNTY CLERK BEXAR COUNTY, TEXAS

Filed for Record in:
BEXAR COUNTY, TX
GERRY RICKHOFF, COUNTY CLERK

On Nov 12 1996

At 4:10pm

Receipt: 268336
Recording: 59.00
Doc/Mgt: 6.00

Doc/Num : 96-0172264

Deputy -Betty Sepulveda

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