

Yesterday's Crossing Architectural Control Committee

Addendum For Outbuildings

Article III

Use Restrictions

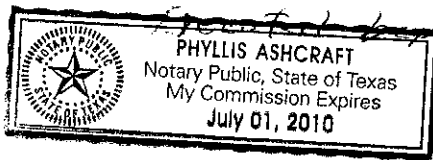
Section 3.01a Outbuilding Construction – This section shall apply to structures other than the residence and garage, which substantially improve the property, and which may be referred to as barns, greenhouses, gazeboes, spa or pool rooms, storage buildings, shops, workshops, among others. All outbuildings must be approved in writing by the ACC prior to being erected, altered, or placed on the property.

- A. Number of Outbuildings – The actual number of outbuildings that will be permitted on a lot(s) is subject to the final decision of the ACC. Special attention will be given to the size and overall appearance of the property as to harmony of design with the existing structures to also include structures on other lots in the surrounding area.
- B. Location – No outbuilding shall be located nearer than seventy feet (70') from the front property line and must be behind the main dwelling. Outbuildings may be no nearer than ten feet (10') from the side and rear property lines unless approved in writing by the ACC.
- C. Size – The ACC will consider various sizes of outbuildings but no outbuilding will be permitted which is larger than thirty feet by forty feet (30'x40'). Eave wall height of an outbuilding shall be no higher than twelve feet (12') with ridge wall height determined by roof pitch.
- D. Style – The ACC will consider any proposed outbuilding design, but reserves the right to reject any style not found to be consistent with country estate living or which is not in harmony of design with existing structures. All outbuildings must be completely enclosed on all sides and the maximum roof pitch allowed will in no case be greater than that of the main dwelling. All utilities must be underground.
- E. Material of Construction – Materials of construction shall be brick, stucco, stone, wood, painted Hardi-siding, and factory-coated metal with a baked on paint. If wood is used, all exterior surfaces must be painted immediately after construction. Galvanized, or galvanized-colored, corrugated exterior metal siding or roofing will not be approved.
- F. Colors – The exterior colors chosen for outbuilding walls and trim shall be consistent and similar to the colors chosen for the exterior walls and trim of the primary residence.

This Addendum for Outbuildings is hereby approved and adopted by D&M Development for Yesterday's Crossing ACC on the date indicated below.

Approved: Dwight Delozier
Dwight Delozier

Date: 10-21-09



Present before me this 21st day of October, 2009

Phyllis Ashcraft
Notary Public

145-11-2712

2006-090778
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
YESTERDAY'S CROSSING

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STATE OF TEXAS

COUNTY OF MONTGOMERY

KNOW ALL BY THESE PRESENTS:

WITNESSETH:

This Declaration of Covenants, Conditions, Restrictions and Easements (the ADeclaration@) is made as of the date set forth below by D & M DEVELOPMENT, LLP, (hereinafter referred to as ADeveloper@).

WHEREAS, Developer is the owner of that certain tract of land known as "YESTERDAY'S CROSSING, " BEING 59,643 acres in the Raleigh Rogers Survey, AS PER THE PLAT OF SAID SUBDIVISION, RECORDED IN THE OFFICE OF THE COUNTY CLERK OF MONTGOMERY COUNTY, TEXAS ON THE 3 DAY OF March, 2006, AFTER HAVING BEEN APPROVED AS PROVIDED BY LAW, AND BEING RECORDED IN CABINET 2, SHEET/S 257-259 OF THE MAP RECORDS OF MONTGOMERY COUNTY, TEXAS (hereinafter referred to as the "Project", or as YESTERDAY'S CROSSING).

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of lots in said Subdivision;

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon the Subdivision known as YESTERDAY'S CROSSING, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof except that no part of this Declaration or the Restrictions shall be deemed to apply in any manner to any area not included in the boundaries of said Plat. Developer also declares that this Subdivision shall be subject to the jurisdiction of the "Association" (as hereinafter defined).

ARTICLE I

DEFINITIONS

Section 1.01. "Annexable Area" shall mean and refer to any additional property made subject to the jurisdiction of the Association pursuant to the provisions set forth herein, including, without limitation, any other Sections of YESTERDAY'S CROSSING, if any, Developer may plat and any property adjacent to or in the proximity of the Property which the Developer may wish to include in the jurisdiction of the Association.

Section 1.02 "Association" shall mean and refer to YESTERDAY'S CROSSING PROPERTY OWNERS ASSOCIATION and its successors and assigns.

Section 1.03 "YESTERDAY'S CROSSING" shall mean and refer to this Subdivision and any other sections of YESTERDAY'S CROSSING hereafter made subject to the jurisdiction of the Association.

Section 1.04 "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.05 "Builders" shall mean and refer to persons or entities that purchase lots and build speculative or custom homes thereon for third party purchasers.

Section 1.06 "Common Area" shall mean all real property (including the improvements thereto) within the Subdivision owned by the Developer and/or the Association for the common use and enjoyment of the Owners and/or any other real property and improvements, including, but not limited to roads, parks, open spaces, lakes, dams, greenbelt areas and other facilities and areas designated on the Plat within the Common Area to which the Owners may hereafter become entitled to use.

Section 1.07 "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's lot.

Section 1.08 "Developer" shall mean and refer to D & M DEVELOPMENT, LLP, and its successors and assigns.

Section 1.09 "Lot" shall mean and refer to any plot of land identified as a lot or tract on the plat of the Subdivision. For purposes of this instrument, "lot" shall not be deemed to include any portion of any "Common Areas," "Reserves," "Restricted

Reserves", "Multi-purpose Reserves", or "Unrestricted Reserves," (defined herein as any Common Areas, Reserves, Restricted Reserves, Multi-purpose Reserves, or Unrestricted Reserves shown on the Plat) in the Subdivision, regardless of the use made of such area.

Section 1.10 "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 1.11 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely as security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01 Recorded Subdivision Map of the Property. The plat ("Plat") of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat, replats or amendments of the Plat of the Subdivision recorded or hereafter recorded shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Developer, conveying said Property or any part thereof whether specifically referred to therein or not.

Section 2.02 Easements. Developer reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Montgomery County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. Developer further expressly reserves the right to enter upon any lot for the purpose of improving, constructing or maintaining any natural or man made drainage pattern, area or easement. All utility easements in the Subdivision may be used for the construction of drainage swales or detention ponds in order to provide for improved surface drainage of the Reserves, Common Area and/or lots. The record owner of any detention pond lot shall, subject to applicable utility easements, have the exclusive use and enjoyment of such pond and may enhance the appearance thereof with appropriate vegetation and structures. No owner shall place any fill dirt or other material in the drainage easement, provided, however, any Owner may increase the depth, volume or capacity of said drainage easement. Such improvements must be in conformity with the Architectural Control Committee and the City of Conroe or other authorized governmental agency. Owner shall maintain and repair the dams, berms, and swales forming such pond provided, however, The Association shall ultimately be responsible for the maintenance and repair of such dams, berms, and swales. In the event of the failure of Owner to maintain and repair the dams, berms, and swales, The Association, after 10 days written notice, may enter upon said lot(s) so as to maintain and/or repair the dams, berms, and swales and may charge Owner(s) of such lot(s) for the cost of such work and associated materials plus a ten (10%) percent fee. In regard to Article VI, Section 6.03, as it relates to detention facility repair and maintenance, these covenants hereby authorize, but do not obligate, the City of Conroe or other authorized governmental agency to exercise such maintenance and assessment power in place of the Association and to secure the assessed costs with a lien against the subdivision lots. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or any Utility District serving the subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility company, water district, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements.

Section 2.03 Title Subject to Easements. It is expressly agreed and understood that the title conveyed by Developer to any of the lots by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water line, gas, sewer, electric lighting, electric power, telegraph or telephone purposes and other easements hereafter granted affecting the lots. The Owners of the respective lots shall not be deemed to own pipes, wires, conduits or other service lines running through their lots which are utilized for or service other lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his lot. The Developer may convey title to said easements to the public, a public utility company or the Association.

Section 2.04 Utility Easements.

(a) Utility ground and aerial easements have been dedicated in accordance with the Plat and/or by separate recorded easements documents.

(b) No building shall be located over, under, upon or across any portion of any utility easement. The Owner of each lot shall have the right to construct, keep and maintain drives, fences (accept where otherwise prohibited by these restrictions), and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such lots, provided, however, any drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the drives, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

Section 2.05 Use of Easements by Owners. The easements adjacent to any road or street may be used by all the Owners, their families, guests and invitees for the purpose of pedestrian walking or jogging and similar activities. No fence or other structures shall be constructed or maintained on any part of said easements. No motorized vehicle of any type, including without limitation, any motorcycle, go-cart, tractor or automobile, ATV or other motorized vehicle, shall be permitted on said easement, except equipment

necessary for the construction, maintenance and repair of said easements shall be permitted. The portion of each lot adjacent to any street or road upon which an easement is located may be mowed and maintained by the Association.

Section 2.06 Drill Sites (Mineral Reservation Easements) and Related (Multipurpose) Easements. The areas designated as Drill Sites (Mineral Reservation Easements) and Related (Multipurpose) Easements thereto on the Plat are the designated drill or excavation sites and related easement locations, until such time as the mineral owners desire to use said area for a drill or excavation site or easement thereto for the exploration and/or development of oil, gas or other minerals. The use of these Drill Sites (Mineral Reservation Easements) and Related (Multipurpose) Easements are specifically subject to the superior right of the mineral owners to use the area as a drill site for the exploration and development of oil, gas or other minerals.

Section 2.07 Roads and Streets. The roads and streets in this Subdivision, as shown on the Plat, are public and are for the use of the owners, their families, guests and invitees. The roads and streets are hereby dedicated in addition to roadways, as utility easements for the purpose of constructing, operating, maintaining or repairing a system(s) of electric lighting, electrical power, telegraph and telephone lines, gas lines, sewers, water lines, storm drainage (surface or underground) cable television, or any other utilities that the Developer sees fit to install (or permit to be installed) in, across and/or under the Property. The roads will be maintained by the Developer or the Association until Montgomery County assumes maintenance responsibility.

Section 2.08 Restricted Reserves. The areas designated as Reserves on the Plat shall be used for whatever purposes Developer may designate, including but not limited to commercial usages, parks and sites for water wells, sewage treatment and plants to serve the Subdivision. Specifically, Reserves A and B are not a part of or in any way controlled or effected by these Covenants.

ARTICLE III

USE RESTRICTIONS

Section 3.01 Single Family Residential Construction. No building shall be erected, altered, placed or permitted to remain on any lot or Composite Building Site other than one dwelling unit ("Dwelling") per each lot to be used solely for residential purposes except that one dwelling unit may be built for use of guests, servants or parents of residents, provided said house must contain a minimum of 500 square feet, be built as an extension of the main house or the garage, not as a free standing dwelling, and be built after or while the main dwelling is being built and be approved in writing by the Architectural Control Committee prior to construction. All dwellings must have at least a two (2) but not more than four (4) car garage. Detached garages, storage buildings, workshops, and barns may be constructed on the property, so long as they are of good construction, kept in good repair, and are not used for residential purposes, provided however, the construction of the main dwelling must have been completed or under construction. All dwellings, detached garages, storage buildings, workshops, and barns must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property. The term "dwelling" does not include pre-fab, modular, manufactured or mobile homes, or any old or used houses to be moved on the lot and said manufactured or mobile and used homes are not permitted within the Subdivision. All main dwellings must have at least 2200 square feet of living area, excluding porches, and be built with new construction materials. If dwelling is two (2) stories in height the square footage of the ground floor must be a minimum of 1600 square feet. No dwelling on a waterfront lot may exceed two (2) stories in height or exceed three (3) stories in height on all other lots. Residences, garages and carports shall be of seventy-five percent (75%) masonry construction or equivalent on it's exterior wall area (Stucco and fiber cement planks (i.e. Hardi-plank) shall be considered masonry). Where fiber cement (i.e. Hardi-plank) is to be used on the front and sides of main dwelling there must be a minimum of forty (40) percent stone or stucco on those sides. Any wood siding must be located on the rear of dwelling, out of view from the street. Any building, structure or improvement commenced on any tract shall be completed as to exterior finish and appearance within six (6) months from the setting of forms for the foundation of said building or structure. The roof of any dwelling shall be constructed of either composition shingles, copper, tile, slate, standing seam metal or other material approved by the Architectural Control Committee prior to construction. The use of sheet metal or similar material on the roof or exterior sides of any Dwelling other than as flashing is prohibited unless otherwise provided herein. As used herein, the term "residential purposes" shall be construed to prohibit mobile homes or trailers being placed on said lots, or the use of said lots for duplex houses, condominiums, townhouses, garage apartments, or apartment houses; and no lot shall be used for business, educational, religious or professional purposes of any kind whatsoever, nor for any commercial or manufacturing purposes. Provided, however, an Owner may maintain a home office in a dwelling with no advertising signs nor regular visits by customers or clients.

Section 3.02 Building Site. Any Owner of adjoining lots (or portions thereof) may, with prior written approval of the Architectural Control Committee, convey portions of their lot to Owners of side, adjoining lots; so long as the portions conveyed, adjoin and parallel the full distance of a side lot line, the remaining lot is not less than one (1) acre in size and the total number of lots in the subdivision is not greater than the number originally subdivided.

Section 3.03 Location of the Improvements upon the Lot. No building of any kind shall be located on any lot nearer to any side or rear property line, or nearer to any road or nearer to the natural creek or waterway than as may be indicated on the Plat or these restrictions; provided, however, as to any lot, the Architectural Control Committee may waive or alter any such setback line if the Architectural Control Committee, in the exercise of the Architectural Control Committee's sole discretion, deems such waiver or alteration is necessary to permit effective utilization of a lot. Any such waiver or alteration must be in writing and recorded in the Deed of Records of Montgomery County, Texas. The main residential structure on any lot shall face the front of the lot towards the street or road and all other structures or buildings shall be located behind the main residential structure, unless the Architectural Control Committee approves a deviation in writing. Where a lot fronts two (2) streets, the front shall be determined at the sole discretion of the Architectural Control Committee.

The minimum dimensions of any lot and the building set back lines shall be as follows provided, any conflict with the building set back lines set forth on the Plat shall be controlled by the Plat):

- a. The building set back line along all street frontage of each lot shall be fifty (50) feet unless designated otherwise on the Plat.
- b. Barns must be set back a minimum of seventy (70) feet from any front street and a minimum of seventy (70) feet from any side street. Where these set-backs would preclude construction of a barn, the Architectural Control Committee may give a variance, provided, however, in no case may the barn be closer to a front street than fifty (50) feet and a side street of fifty (50) feet.

c. Except as specified on the Plat, the building set back line along the side and rear of each lot shall be twenty-five (25') feet.

Section 3.04 Residential Foundation Requirements. All building foundations shall consist of concrete slabs, provided, however, the Architectural Control Committee may approve a different type of foundation when circumstances such as topography of the lot make it impractical to use the above foundations for any portion of the foundation of the building improvements constructed on the lot. A certified structural engineer must engineer the main dwelling foundation and the plans must have this engineer's seal of approval prior to the submission of the plans to the Architectural Control Committee.

Section 3.05 Driveways. All driveways in the Subdivision shall be constructed of concrete, asphalt, brick, stone (not loose rock), or other materials approved by the Architectural Control Committee, and shall be completed within three (3) months of completion of the main dwelling. Driveway widths shall be minimum of ten (10) feet. For these purposes completion date of the main dwelling shall be the date the Owner begins to occupy said dwelling. No lot may be used to access property outside the boundaries of YESTERDAY'S CROSSING SUBDIVISION, except that Developer, in expanding the boundaries of the subdivision, may use an existing lot as access, if necessary and may, in it's sole discretion, grant access to adjacent property, through an unsold lot or a sold lot (with approval of owner of said sold lot) for the purpose of allowing adjacent property owner either temporary or permanent access. Access to an adjacent property owner shall be in writing and Developer may restrict said access in whatever manner Developer deems appropriate.

Section 3.06 Use of Temporary Structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any lot at any time as a residence, either temporarily or permanently, provided, however, that Developer reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling lots, selling or constructing residences and constructing other improvements within the Subdivision.

Section 3.07 Water Supply. All residential dwellings in this Subdivision shall be equipped with and served by a fresh water system installed, operated and continuously maintained in accordance with applicable utility company and governmental requirements, and no water wells shall be made, bored or drilled, nor any type or kind of private system installed or used except upon approval of the Architectural Control Committee and any required governmental authorities. Wells may be drilled by the Developer or Association for use in watering common areas and filling of lakes or ponds in common areas.

Section 3.08 Sanitary Sewers. No outside, open or pit type toilets will be permitted in this Subdivision. Prior to occupancy, all dwellings constructed in this Subdivision must have a septic or sewage disposal system installed by the Owner to comply with the requirements of the appropriate governing agency. Further, during the period of construction of any dwelling in the Subdivision, the Owner or Owner's contractor must provide a portable toilet.

Section 3.09 Walls and Fences. Walls and fences, if any, must be approved prior to construction or revision by the Architectural Control Committee and shall be no closer to front street property lines than the utility easement boundary line across the front of said lot and no closer than the utility easement boundary line along any side street. The erection of any wall, fence or other improvements on any utility easement adjoining any street is prohibited. Unless otherwise approved by the Architectural Control Committee, fences installed within one hundred (100) feet of the front lot line or along and adjacent to any road or street must be constructed of three (3) rail masonry columns with wrought iron separations, or wrought iron. All other fences may be constructed of wrought iron or wood, provided, however, no barbed wire or chain link fences shall be allowed. No privacy fences (i.e. solid wood or masonry) shall be allowed any closer to the front street than the front of the dwelling on any lot. Fences may be constructed on waterfront lots, however they must be built so as to not obstruct the view of the water from an adjoining lot, as determined by the Architectural Control Committee.

Section 3.10 Prohibition of Offensive Activities. Without expanding the permitted use of the lots, no activity, whether for profit or not, shall be conducted on any lot which is not related to single family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any lot which may be or become an annoyance or a nuisance to the Subdivision. This restriction is waived in regard to the customary sales activities required to sell lots and/or homes in the Subdivision. Without limitation, the discharge or use of firearms is expressly prohibited. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

Section 3.11 Garbage and Trash Disposal. Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No lot shall be used or maintained as a dumping ground for rubbish or landfill. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Prior to the Control Date, Developer shall hire a trash contractor for the Subdivision and Owners with dwellings in the Subdivision will monthly, pay their proportionate charge therefor, to Developer. After the Control Date, the Property Owners Association shall hire a trash contractor for the Subdivision and Owners with dwellings in the Subdivision will monthly, pay their proportionate charge therefor, to the Property Owners Association.

Section 3.12 Junked Motor Vehicles, Etc. Prohibited. No lot shall be used as a depository for abandoned or junked motor vehicles, etc. An abandoned or junked motor vehicle is one without a current, valid state vehicle inspection sticker and license plate. No junk of any kind or character, or dilapidated structure or building of any kind or character, shall be kept on any lot. No accessories, parts or objects used with cars, boats, buses, trucks, trailers, house trailers or the like, shall be kept on any lot other than in a garage or other structure approved by the Architectural Control Committee.

Section 3.13 Signs. No signs, advertisement, billboard or advertising structure of any kind, other than those signs erected by the Developer in the marketing of the lots within the subdivision, may be erected or maintained on any lot without the consent in writing of the Architectural Control Committee, except (i) one (1) professionally made sign not more than seven hundred sixty-eight (768) square inches, advertising an Owner's residence for sale or rent, may be placed on such improved lot, (ii) one (1) sign not more than seven hundred sixty-eight (768) square inches advertising the builder of the Owner's residence may be placed on such lot during the construction period of such residence from the forming of the foundation until completion not to exceed a twelve (12) month period and (iii) one (1) sign advertising a home being sold by a builder until the home is sold and transferred into the name of the new Owner. Developer or any member of such Committee or the Association shall have the right to remove any such sign, advertisement, billboard or structure which is placed on any lot in violation of these restrictions, and in doing so, shall not be liable, and are hereby

expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal. Developer may grant variances to these sign restrictions.

Section 3.14 Livestock and Animals. No animals, livestock, pigs, rabbits, or poultry, of any kind shall be raised, bred or kept on any lot in the Subdivision except that dogs, cats or other common household pets may be kept on all lots in the Subdivision, provided that they are not kept, bred or maintained for commercial purposes and do not become a nuisance or threat to other Owners. Pigs, rabbits, chickens, turkeys and other such animals shall not be considered household pets. Dogs such as Pit Bulls, Rottweilers, and other aggressive dogs are prohibited. No Animals shall be allowed to run loose in the Subdivision.

Section 3.15 Mineral Development. Except within the areas designated as Drill Site locations on the Plat, and easements related thereto, no commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any lot, and, no derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 3.16 Drainage. Any natural or established drainage patterns of streets, lots or roadway ditches will not be impaired by any person or persons and Developer may enter upon any lot to maintain such natural drainage areas. Driveway culverts must be installed prior to beginning construction of any building or dwelling on the lot and must be of sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow. The size and type of driveway culverts must also be approved by the Montgomery County Engineer's office. All culverts shall be sloped end culverts or have headers constructed of brick, stone or concrete with the prior written consent of the Architectural Control Committee. The Architectural Control Committee shall provide specifications for culverts and headers.

Section 3.17 Lot Maintenance. All lots, at Owner's sole cost and expense, shall be kept at all times in a neat, attractive, healthful and sanitary condition, and from the date any lot is underbrushed or cleared, the Owner or occupant of said lot shall keep all weeds and grass thereon (outside of natural vegetation areas or preserves) cut and in no event may any lot be used for storage of materials or equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish. Provided, however, the burning of underbrush and trees during lot clearing shall be permitted under conditions of applicable law. All yard equipment or storage piles shall be kept screened by a service yard or other similar facility as herein otherwise provided, so as to conceal them from view of neighboring lots, streets or other property. Such maintenance includes, but is not limited to the following:

- a. Prompt removal of all litter, trash, refuse, and wastes.
- b. Lawn mowing (outside of the natural vegetation areas or preserves).
- c. Tree and shrub pruning (outside of the natural vegetation areas or preserves).
- d. Keeping exterior lighting and mechanical facilities in working order.
- e. Keeping lawn and garden areas alive, free of weeds, and attractive.
- f. Keeping parking areas, walkways and driveways in good repair.
- g. Complying with all government health and policy requirements.
- h. Repainting of improvements.
- i. Repair of exterior damage to improvements.

In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof the Association or their designated agents may, in addition to any and all remedies, either at law or in equity, available for the enforcement of these restrictions, without liability to the Owner, Builder or any occupants of the lot in trespass or otherwise, enter upon (and/or authorize one or more others to enter upon) said lot, to 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, Builder or occupant of such lot for the cost of such work and associated materials, plus a fee of \$10.00 per month for each instance. Payment thereof shall be collected as an additional Maintenance Charge and shall be payable on the first day of the next calendar month.

Section 3.18 Exterior Maintenance of Building. In the event the owner of any building in the Subdivision should allow such building to fall into disrepair and become in need of paint, repair or restoration of any nature and become unattractive and not in keeping with the neighborhood, the Association and/or the Developer will give such owner written notice of such condition. Fifteen (15) days after notice of such condition to owner, and failure of owner to begin and continue at a diligent, reasonable rate of progress to correct such condition, the Association and/or the Developer in addition to any and all remedies, either at law or in equity, available for the enforcement of these Restrictions, may at its sole discretion enter upon said premises, without liability to Owner, to do or cause to be done any work necessary to correct said situation. The owner thereof shall be billed for cost of necessary repairs, plus ten (10%) percent. All monies so owed the Association will be an additional Maintenance Charge and be payable on the first day of the next calendar month.

Section 3.19 Miscellaneous Use Restrictions. Without limiting the foregoing, the following restrictions shall apply to all lots:

- a. No boat, jet-ski, aircraft, travel trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the front of any dwelling or parked on any street in the Subdivision. Any such vehicle or equipment may be parked for storage to the rear of any dwelling. All boats so parked or stored on any lot must at all times also be stored on a trailer. No such vehicle or equipment shall be used as a residence either temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a dwelling in the Subdivision.
- b. No vehicle shall be permitted to park overnight on any street within the Subdivision except for those vehicles used by a builder during the construction of improvements on lots or Common Areas in the Subdivision.
- c. No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Subdivision at any time.
- d. No vehicles or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles and pick-up trucks that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas.

Section 3.20 Hazardous Substances. No lot shall be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition. Notwithstanding the foregoing, no Hazardous Substance shall be brought onto, installed, used, stored, treated, buried, disposed of or transported over the subdivision or any lot therein, and all activities on the lots shall, at all times, comply with Applicable Law. The term "Hazardous Substance" shall mean any substance which, as of the date hereof, or from time to time hereafter, shall be listed as "hazardous" or "toxic" under the regulations implementing The Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq., The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 et seq., or listed as such in any applicable state or local law or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under applicable law. The term "Applicable Law" shall include, but shall not be limited to, CERCLA, RCRA, The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq., and any other local, state and/or federal laws or regulations that govern the existence, cleanup and/or remedy of contamination on property, the protection of the environment from spill deposited or otherwise in place contamination, the control of hazardous waste or the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

Section 3.21 Electric Utility Service. Each lot owner, at his expense, shall be required to install underground electric service lines from the transformer or source of feed to the meter location. Further, each lot owner may expect to pay a charge for connection to such electric utility service, and the owner is obligated to contact the utility company serving the subdivision to determine such charge and make arrangements for the installation of said underground service lines and connection to the electrical distribution system. Owner shall also be responsible for all charges for all utility service furnished to Owner's lot.

Section 3.22 Mail Boxes. Mail boxes must complement the main house and must be approved by the Architectural Control Committee.

Section 3.23 Satellite Dishes and Antennae. A satellite dish may not exceed eighteen (18) inches in diameter and must be mounted as to not be visible from the street. All dishes shall be of one solid color of black or earth tones of brown, gray, or tan. No more than one satellite dish shall be permitted on each lot. All satellite dishes and antennae must be approved by the Architectural Control Committee in writing before installation.

Section 3.24 Lakes.

- a. The lakes within the subdivision that have public access by means of a park (i.e. restricted reserve) are to be used only by the property owners of YESTERDAY'S CROSSING and their guests.
- b. Boats may be placed in the lakes for fishing and other recreational purposes. Except for maintenance to be performed by Developer or the Association, boats may not be motorized.
- c. Canoes, sail boats, paddle boats, row boats and other similar type craft are permissible.
- d. All fishing must be done in compliance with local, state and federal fishing laws, as well as in compliance with P.O.A. rules and regulations as promulgated from time to time.
- e. Anyone throwing trash or waste into the lake or otherwise violated rules will be denied use of the lake.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 4.01 Basic Control.

a. No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced, or changes made in the design or exterior appearance thereof, or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original construction, on any lot in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality of materials, drainage, harmony of external design and color with existing and proposed structures and location with respect to topography and finished grade elevation.

b. Each application made to the Committee shall be accompanied by two sets of plans and specifications for all proposed construction (initial or alterations) to be done on such lot, including the drainage plan for the lot, plot plans showing the location and elevation of the improvements on the lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the Committee shall be the address of the principal office of the Developer or the Association. If approved, one of the two sets of plans submitted shall be returned to the Owner with said approval noted thereon.

Section 4.02 Architectural Control Committee.

(a) The authority to grant or withhold architectural control approval as referred to above is initially vested in the Developer; provided, however, the authority of the Developer shall cease and terminate upon the election of the Architectural Control Committee of the Association (sometimes herein referred to as the "Committee"), in which event such authority shall be vested in and exercised by the Committee (as provided in (b) below). The term "Committee", as used in this Declaration, shall mean or refer to the Developer or to YESTERDAY'S CROSSING Architectural Control Committee composed of members of the Association, as applicable.

(b) At such time as eighty percent (80%) of all of the lots in the Subdivision are conveyed by Developer (from time to time hereafter referred to as the "Control Transfer Date"), the Developer shall cause an instrument transferring control to the Association to be placed of record in the Real Property Records of Montgomery County, Texas (which instrument shall include the Control Transfer Date). Thereupon, the Board of Directors of the Association shall elect a committee of three (3) members to be known as YESTERDAY'S CROSSING Architectural Control Committee. From and after the Control Transfer Date, each member of the Committee must be an Owner of property in some section of YESTERDAY'S CROSSING. Additionally, the Developer shall have the

right to discontinue the exercise of architectural control privileges and arrange for the transfer to the Association at any time prior to the Control Transfer Date by filing a statement and instrument to such effect in the Real Property Records of Montgomery County, Texas.

Section 4.03 Effect of Inaction. Approval or disapproval as to architectural control matters, as set forth in the preceding provisions of this Declaration shall be in writing. In the event that the authority exercising the prerogative of approval or disapproval (whether the Developer or the Committee) fails to approve or disapprove in writing any plans and specifications and plots received by it in compliance with the preceding provisions within thirty (30) days following such submission, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof.

Section 4.04 Effect of Approval. The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof.

Section 4.05 Minimum Construction Standards. The Developer or the Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only and the Developer or Committee shall not be bound thereby.

Section 4.06 Variance. The Developer or the Committee, as the case may be, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards and requirements as promulgated from time to time by the Developer or the Committee, when circumstances such as topography, natural obstructions, lot configuration, lot size, hardship, aesthetic or environmental considerations may require a variance. The Developer and the Committee reserve the right to grant variances as to building set-back lines, fences, and other items. Such variances must be evidenced in writing and shall become effective when signed by the Developer or by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

ARTICLE V

YESTERDAY'S CROSSING PROPERTY OWNERS ASSOCIATION

Section 5.01 Membership. Every person or entity who is a record owner of any lot which is subject to the Maintenance Charge (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, including contract sellers, shall be a "Member" of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each lot owned by such member. Memberships shall be appurtenant to and may not be separated from the ownership of the lots. Regardless of the number of persons who may own a lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each lot. Additionally, the Directors of the Association shall also be members of the Association (as more particularly described in the Bylaws). Ownership of the lots shall be the sole qualification for membership. The voting rights of the members are set forth in the Bylaws of the Association.

Section 5.02 Non-Profit Corporation. A non-profit corporation, has been (or will be) organized and it shall be governed by the Articles of Incorporation and Bylaws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 5.03 Bylaws. The Association has adopted or may adopt whatever Bylaws it may choose to govern the organization or operation of the Subdivision and the use and enjoyment of the lots and Common Areas, provided that the same are not in conflict with the terms and provisions hereof.

Section 5.04 Owner's Right of Enjoyment. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every assessed lot, subject to the following provisions:

- (a) the right of the Association, with respect to the Common Areas, to limit the number of guests of Owners;
- (b) the right of the Association to make rules and regulations regarding use of any Common Area.
- (c) the right of the Association, in accordance with its Articles and Bylaws (and until the Transfer Control Date, subject to the prior written approval of the Developer), to (i) borrow money for the purpose of improving and maintaining the Common Areas and facilities (including borrowing from the Developer or any entity affiliated with the Developer) and (ii) mortgage said property, however, the rights of such mortgagee of said property shall be subordinate to the rights of the Owners hereunder;
- (d) the right of the Association to suspend the Member's voting rights and the Member's and "Related Users" (as hereinafter defined) right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his lot(s) remains unpaid;
- (e) the right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration or the "Rules and Regulations," defined in Article VIII hereof, which suspension

shall continue for the duration of such infraction or violation, plus a period not to exceed sixty (60) days following the cessation or curing of each infraction or violation; and,

(f) the right of the Association, subject, until the Transfer Control Date, to the prior written approval of the Developer, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to the provisions of this Declaration.

Section 5.05 Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the Member's immediate family living in the Member's residence, and his contract purchasers who reside on the lot (collectively, the "Related Users").

ARTICLE VI

MAINTENANCE FUND

Section 6.01 Maintenance Fund Obligation. Each Owner of a lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association, in advance, an annual maintenance charge on or before January 1st of each year, (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the lots and shall be a continuing Lien upon the property against which each such Maintenance Charge and other charges and assessments are made.

Section 6.02 Basis of the Maintenance Charge

(a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund," which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each lot (or residential building site) to the Association annually, in advance, on or before the first day of the first month of each calendar year, or on such other basis (monthly, quarterly or semi-annually) as the Developer or the Board of Directors of the Association may designate in its sole discretion. Provided, however, up to three (3) adjoining lots owned by one (1) Owner pursuant to Section 3.02 hereof, may be considered one lot for the Maintenance Charge purposes.

(b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Developer or the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his lot.

(c) The exact amount of the Maintenance Charge applicable to each lot will be determined by the Developer or the Board of Directors of the Association within the two (2) months preceding the due date of the Maintenance Charge. The initial annual Maintenance Charge shall be seven hundred fifty (\$750.00) dollars per lot. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Developer or the Board of Directors of the Association, subject to the provision hereof.

(d) The Maintenance Charge described in this Article VI and other charges or assessments described in this Declaration shall never apply to lots owned by the Developer. The Developer, prior to the Control Transfer Date, and the Association, from and after the Control Transfer Date, reserve the right at all times in their own judgment and discretion, to exempt any lot ("exempt lot"), in the Subdivision from the Maintenance Charge, in accordance with Section 6.07 hereof. If an Exempt lot is sold to any party the Maintenance Charge shall be automatically reinstated as to the Exempt lot and can only be waived at a later date pursuant to the provisions of the preceding sentence. The Developer, prior to the Control Transfer Date, and the Association, from and after the Control Transfer Date, shall have the further right at any time, and from time to time, to adjust or alter said Maintenance Charge from month to month as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

Section 6.03 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, a vendor's (purchase money) lien for the benefit of the Association, shall be and is hereby reserved in the deed from the Developer to the purchaser of each lot or portion thereof, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Association. As additional security for the payment of the Maintenance Charge and other charges and assessments hereby levied, each Owner of a lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a

tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible retainer and the issuance of a writ of restitution thereunder.

In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 6.03 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

Section 6.04 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (i) the amount of the claim of delinquency, (ii) the interest and costs of collection, including reasonable attorneys fees, which have accrued thereon (iii) the legal description and street address of the lot against which the lien is claimed and (iv) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Trustees to cover the preparation and recordation of such release of lien instrument.

Section 6.05 Liens Subordinate to Mortgages. The liens described in this Article VI and the superior title herein reserved shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or other bona fide third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any lot and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a lot who obtains title to such lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such lot which accrued prior to the time such holder acquires title to such lot. No such sale or transfer shall relieve such transferee of title to a lot from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a lot shall not affect the Association's lien for Maintenance Charges or other charges or assessments. The Association shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of the lien described in Section 6.01 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VI or constitute the breach of any obligation by the Association.

Section 6.06 Purpose of the Maintenance Charge. The Maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision and other portions of the Annexable Area which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described in Article VIII, including the maintenance of the common areas, roads or drainage easements, and the establishment and maintenance of a reserve fund for maintenance of the common areas, roads and drainage easements. The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgment of the Developer or Association, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area, etc. as may from time to time be authorized by the Association. Except for the Association's use of the Maintenance Charge to perform its duties described in this Declaration and in the Bylaws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood that the judgment of Developer or the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 6.07 Exempt Property. The following property subject to this Declaration shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (i) all properties dedicated to and accepted by a local public authority; (ii) the Common Area; and (iii) all properties owned by the Developer or the Association or a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas; however, no land or improvements devoted to dwelling use shall be exempt from said Maintenance Charge, provided, however, the sales office of the Developer shall be exempt as long as a portion of the dwelling is being used as a Sales Office for the sale of lots and/or homes within the development.

Section 6.08 Handling of Maintenance Charges. The collection and management of the Maintenance Charge or other charge or assessment levied hereunder, shall be performed by the Developer until the Control Transfer Date, at which time the Developer shall deliver to the Association all funds on hand together with all books and records of receipt and disbursements. The Developer and, upon transfer, the Association, shall maintain separate special accounts for these funds, and Owners shall be provided at least annually, information on the Maintenance Fund as provided in Section 8.07 hereof.

ARTICLE VII

DEVELOPER'S RIGHTS AND RESERVATIONS

Section 7.01 Period of Developer's Rights and Reservations. Developer shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the lakes, roads and other Common Areas from the date hereof, until the earlier to occur of (i) the Control Transfer Date or (ii) Developer's written notice to the Association of Developer's termination of the rights described in Article VII hereof. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of a lot by Developer to an Owner whether or not specifically stated therein and in each deed or other instrument by

which any property within the Common Area is conveyed by Developer. The rights, reservations and easements hereafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Developer's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Developer's consent to any one shall not be construed as a consent to any other or subsequent amendment.

Section 7.02 Right to Construct Additional Improvements in Common Area. Developer shall have and hereby reserves the right (without the consent of any other Owner), but shall not be obligated, to construct additional improvements within the Common Area at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in the increase of such Maintenance Charge. Developer shall, upon the Control Transfer Date, convey or transfer such improvements to the Association and the Association shall be obligated to accept title to, care for and maintain the same as elsewhere provided in this Declaration.

Section 7.03 Developer's Right to Use Common Areas in Promotion and Marketing of the Property and Annexable Area. Developer shall have and hereby reserves the right to reasonable use of the Common Area and of services offered by the Association in connection with the promotion and marketing of land within the boundaries of the Property and Annexable Area. Without limiting the generality of the foregoing, Developer may erect and maintain on any part of the Common Area such signs, temporary buildings and other structures as Developer may reasonably deem necessary or proper in connection with the promotion, development and marketing of land within the Property and Annexable Area; may use vehicles and equipment within the Common Area for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Property and Annexable Area, who are not Owners or Members of the Association, to use the Common Area at reasonable times and in reasonable numbers; and may refer to the services offered by the Association in connection with the development, promotion and marketing of the Property and Annexable Area. Further, the Developer may establish Rules and Regulations for the use of the Common Area in the Subdivision.

Section 7.04 Developer's Rights to Grant and Create Easements. Developer shall have and hereby reserves the right, without the consent of any other Owner or the Association, to grant or create temporary or permanent easements, for access, utilities, pipeline easements, cable television systems, communication and security or security gate systems, drainage, water and other purposes incident to development, sale, operation and maintenance of the Subdivision, located in, on, under, over and across (i) the lots or other property owned by Developer, (ii) the Common Area, and (iii) existing utility easements. Notwithstanding any other provision of this Declaration, Developer also reserves the right, without the consent of any other Owner or the Association, to (1) grant or create temporary or permanent easements for access over and across the streets and roads within the Subdivision to and from any roads for the benefit of owners of property, regardless of whether the beneficiary of such easements own property which is hereafter made subject to the jurisdiction of the Association and (ii) grant or create temporary or permanent easements for any and all purposes, that Developer, in its sole judgment may determine are beneficial to the development of the Subdivision; including easements for pedestrian and vehicular ingress and egress over or across lots or other property owned by Developer, to property outside of the Subdivision, whether the grantee/beneficiary of such easements own property which is or thereafter becomes subject to the jurisdiction of the Association.

Section 7.05 Developer's Rights to Convey Additional Common Area to the Association. Developer shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and improvements thereon, if any, to the Association as Common Area at any time and from time to time in accordance with this Declaration, without the consent of any other Owner or the Association.

Section 7.06 Annexation of Annexable Area. Additional residential property and common areas outside of the Subdivision including, without limitation, the Annexable Area, may, at any time and from time to time, be annexed by the Developer into the real property which becomes subject to the jurisdiction and benefit of the Association, without the consent of the Owners or any other party; provided, however, such additional residential property outside of the Annexable Area may be made subject to the jurisdiction of the Association by the Developer. The owners of lots in such annexed property, as well as all other Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Common Areas, including the lakes, that are or may become subject to the jurisdiction of the Association, provided that such annexed property is impressed with and subject to at least the Maintenance Charge imposed hereby.

ARTICLE VIII

DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION

Section 8.01 General Duties and Powers of the Association. The Association has been or will be formed to further the common interest of the Members. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision and any portion of the Annexable Area which becomes subject to the jurisdiction of the Association. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration.

Section 8.02 Duty to Accept the Property and Facilities Transferred by Developer. The Association shall accept title to any of the Common Areas or other real property, including any improvements thereon and personal property transferred to the Association by Developer, and equipment related thereto, together with the responsibility to perform any and all administrative functions and recreation functions associated therewith (collectively herein referred to as "Functions"), provided that such property and Functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Developer may include fee simple title, easements, leasehold interests and licenses to use such property. Any property or interest in property transferred to the Association by Developer shall be within the boundaries of the Property or Annexable Area. Any property or interest in property transferred to the Association by Developer shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens and mortgages (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, the terms of any declaration of covenants, conditions and restrictions annexing such property to the Common Area, and all easements, covenants, conditions, restrictions and equitable servitude or other encumbrances which do not materially affect the Owners authorized to use such property. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the

Association by the Developer shall impose upon the Association any obligation to make monetary payments to Developer or any affiliate of Developer including, but not limited to, any purchase price, rent, charge or fee. The property or interest in property transferred to the Association by Developer shall not impose any unreasonable or special burdens of ownership of property, including the management maintenance, replacement and operation thereof.

Section 8.03 Duty to Manage and Care for the Common Area. The Association shall manage, operate, care for, maintain and repair all Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Common Areas shall include, but not be limited to the following: establishment, operation and maintenance of a security or security gate system, if any, for the Subdivision; landscaping, maintenance, repair and replacement of the drainage easements; mowing of street right-of-ways and other portions of the Subdivision; and management, maintenance, repair and upkeep of the Common Areas.

Section 8.04 Other Insurance Bonds. The Association shall obtain such insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 8.05 Duty to Prepare Budgets. The Association shall prepare budgets for the Association, which budgets shall include a reserve fund for the maintenance of all Common Areas and roads.

Section 8.06 Duty to Levy and Collect the Maintenance Charge. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.

Section 8.07 Duty to Provide Annual Review. The Association shall provide for an annual unaudited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same.

Section 8.08 Duties with Respect to Architectural Approvals. Association shall perform functions to assist the Committee as elsewhere provided in Article IV of this section.

Section 8.09 Power to Acquire Property and Construct Improvements. The Association may acquire property or an interest in property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on the Property and may demolish existing improvements.

Section 8.10 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations ("Rules and Regulations"), fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Areas, and the use of any other property, facilities or improvements owned or operated by the Association.

Section 8.11 Power to Enforce Restrictions and Rules and Regulations. The Association (and any Owner with respect only to the remedies described in (ii) below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (i) By entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (iii) by exclusion, after notice and hearing, of any Member of Related User from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or any Related User, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues; (iv) by suspension, after notice and hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or a Related User which assessment shall reimburse the Association for the costs incurred by the Association in connection with such breach; (vi) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of Declaration or such Rules and Regulations by such Member or a Related User; and (vii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Members, plus attorneys' fees incurred by the Association with respect to exercising such remedy.

Before the Board may invoke the remedies provided above, it shall give registered or certified notice of such alleged violation to Owner, and shall afford the Owner a hearing. If after the hearing, 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 Developer, 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.

Section 8.12 Power to Grant Easements. In addition to any blanket easements described in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area. Additionally, the Association, from and after the Control Transfer Date, shall have the power to grant access, utility, drainage, water facility and other similar easements in, on, over and under lots provided that such easements do not unreasonably interfere with the rights of the Owner of such lots.

Section 8.13 Power to Convey and Dedicate Property to Government Agencies. The Association shall have the power to grant, convey, dedicate or transfer any Common Areas, roads or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, which power may be exercised (i) prior to the Control Transfer Date by the Board of Directors and (ii) from and after the Control Transfer Date by the Association, with the

approval of not less than two-thirds (2/3rds) of the Members agreeing in writing or by voting at any scheduled meeting of the Members and with the prior written approval of the Developer. The Association may, subject to the limitations of the preceding sentence, convey property to a public or governmental agency or authority in lieu of such property being condemned by such public or governmental agency or authority.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01 Term. The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the then Owners (including the Developer) of the lots has been recorded agreeing to cancel, amend or change, in whole or in part, this Declaration.

Section 9.02 Amendments. This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners (including the Developer) entitled to cast not less than two-thirds (2/3rds) of the votes of all of the Owners.

If the Declaration is amended by a written agreement signed by those Owners entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Owners of the Association, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facie evidence of the date of execution of said amendment by such Owner. Any such amendment by written agreement shall become effective when the amended declaration, with written agreement attached, is filed in the Real Property Records of Montgomery County, Texas.

If the Declaration is amended by signed ballot of those Members (Owners, including the Developer) entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Members of the Association, they may vote to amend this Declaration, in person, or by proxy, at a meeting of the Members (Owners, including the Developer) duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Notwithstanding any provision contained in the Bylaws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment by ballot of the Members, shall become effective when an instrument is filed for record in the Real Property Records of Montgomery County, Texas, accompanied by a certificate, signed by a majority of the Board of Trustees, stating that the required number of Members (Owners, including the Developer) cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of the filing of the amendment or termination.

Section 9.03 Amendments by the Developer. The Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner or his mortgagee.

Section 9.04 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 9.05 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 9.06 Successors and Assigns. The provisions hereof shall be binding upon and inure to the benefit of the Owners, the Developer and the Association and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 9.07 Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien, or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

Section 9.08 Terminology. All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself. The terms "herein", "hereof" and similar terms, as used in this instrument, refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear. All references in the Declaration to Exhibits shall refer to the Exhibits attached hereto.

Section 9.09 Effect on Annexable Area. The provisions of this Declaration do not impose any restrictions whatsoever or otherwise encumber the Annexable Area, unless and until portions of the Annexable Area are made subject to the jurisdiction of the Association by a separate instrument executed solely by Developer or its successors and assigns and lien holders, which instrument is recorded in the Real Property Records of Montgomery County, Texas.

Section 9.10 Developer's Rights and Prerogatives. Prior to Control Transfer Date, the Developer may file a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for the Developer's (i) discontinuance of the exercise of any right or prerogative provided for in this Declaration to be exercised by the Developer or (ii) assignment to any third party owning property in the Subdivision or Annexable Area, of one or more of Developer's specific rights and prerogatives provided in this Declaration to be exercised by Developer. The assignee designated by Developer to exercise one or more of Developer's rights or prerogatives hereunder shall be entitled to exercise such right or prerogative until the earlier to occur of the (i) Control Transfer Date

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or (ii) date that said assignee files a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for said assignee's discontinuance of the exercise of said right or prerogative. From and after the date that the Developer discontinues its exercise of any right or prerogative hereunder and/or assigns its rights to exercise one or more of its rights or prerogatives to an assignee, the Developer shall not incur any liability to any Owner, the Association or any other party by reason of the Developer's discontinuance or assignment of the exercise of said right(s) or prerogative(s). Upon the Developer's assignment of its rights as of the Transfer Control Date to the Association, the Association shall be entitled to exercise all the rights and prerogatives of the Developer.

IN WITNESS WHEREOF, the undersigned, the Developer herein has hereunto set its hand as of the 7 day of August, 2006.

D & M DEVELOPMENT, LLP

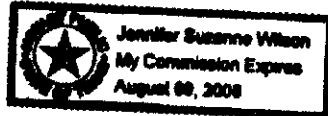
By: *Dwight DeLozier*

STATE OF TEXAS
COUNTY OF Montgomery

This instrument was acknowledged before me on the 7 day of August, 2006, by Dwight DeLozier, on behalf of D & M DEVELOPMENT, LLP and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this day of 7 August, 2006.

Jennifer Susanne Wilson
Notary Public



After Recording Return to:
D & M Development, LLP
123 Blue Heron Dr # 104
Montgomery TX 77316

→ Ron Jackson Jr.
5034 RimRock Pass
MONTGOMERY, TX 77316

OFFICIAL MEMORANDUM
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify 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 Records of Real Property at Montgomery County, Texas.

AUG 07 2006



Mark Imbell
County Clerk
Montgomery County, Texas

FILED FOR RECORD
06 AUG -7 PH 2:28

Mark Imbell
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS