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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR PARK PLACE WEST**

**COLUMBIA EXTRUSION CORPORATION**

Declarant

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**DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR PARK PLACE WEST**

**THIS DECLARATION** is made this 13th day of October, 2005 by **Columbia Extrusion Corporation**, an Oregon corporation (“**Declarant**”).

**RECITALS**

A. Declarant has recorded the plat of “Park Place West” in the plat records of Rockwall County, Texas.

B. Declarant desires to subject the property described in such plat to the conditions, restrictions and charges set forth in this instrument for the benefit of such property, and its present and subsequent owners, and to establish such property as the first phase of a Class I planned development to be known as “Park Place West.”

**NOW THEREFORE**, Declarant hereby declares that the property described in Section 2.1 below shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

**Article 1.**

**Definitions**

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 **“Additional Property”** means any land, whether or not owned by Declarant, that is made subject to this Declaration as provided in Section 2.2 below.

1.2 **“Architectural Review Committee” or “the Committee”** means the committee appointed pursuant to Article 7 below.

1.3 **“Assessments”** means assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, the Bylaws of the Association, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments, Working Fund Assessments and Individual Assessments as described in Article 10 below.

1.4 **“Association”** means the nonprofit corporation to be formed to serve as the Owners association as provided in Article 8 below, and its successors and assigns.

1.5 **“Board of Directors” or “the Board”** means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will

appoint the Board of Directors. After the Turnover Meeting, the Board of Directors will be elected by the Owners.

1.6 **“Bylaws”** means the duly adopted bylaws of the Association set forth in the attached Exhibit A as the same may hereafter be amended or replaced.

1.7 **“Common Areas”** means those lots or tracts designated as such on any plat of the Property, or in this Declaration or any declaration annexing Additional Property to Park Place West, including any Improvements thereon, and shall also include any Lots converted to Common Areas as provided in Section 3.2 below.

1.8 **“Common Easement Areas”** means those easements established for the benefit of all property within Park Place West pursuant to this Declaration or any plat or declaration annexing Additional Property to Park Place West.

1.9 **“Common Maintenance Areas”** means the Common Areas, Common Easement Areas, Limited Common Areas and any other areas designated in this Declaration or any declaration annexing Additional Property to Park Place West as being maintained by the Association.

1.10 **“Declarant”** means Columbia Extrusion Corporation, an Texas corporation, and its successors and assigns if such successor or assignee should acquire Declarant’s interest in the remainder of the proposed project site, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant’s rights under this Declaration.

1.11 **“Design Guidelines”** means the guidelines adopted from time to time by the Architectural Review Committee pursuant to Article 7 below.

1.12 **“Improvement”** means every structure or improvement of any kind, including, but not limited to, a fence, wall, driveway, swimming pool, storage shelter, mailbox and newspaper receptacles, landscaping or other product of construction efforts on or in respect to the Property.

1.13 **“Initial Property”** means Phase 1 of Park Place West as described in Section 2.1 below.

1.14 **“Limited Common Areas”** means those areas established for the exclusive use or enjoyment of certain Lots as designated in this Declaration or any declaration annexing property to Park Place West.

1.15 **“Living Unit”** means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy.

1.16 **“Lot”** means a platted or partitioned lot within the Property, with the exception of any lot marked on a plat of the Property as being common or open space or so designated in this Declaration or the declaration annexing such property to Park Place West. Lots do not include Common Maintenance Areas, or Public Areas.



1.17 **“Mortgagee”** means a mortgage or a trust deed, “mortgagee” means a mortgagee or a beneficiary of a trust deed, and “mortgagor” means a mortgagor or a grantor of a trust deed.

1.18 **“Owner”** means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a contract vendor or other person holding only a security interest in a Lot. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.19 **“Public Areas”** means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or the declaration annexing such property to Park Place West.

1.20 **“Park Place West”** means the Initial Property and any Additional Property annexed to this Declaration.

1.21 **“Rules and Regulations”** means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.22 **“Sold”** means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

1.23 **“The Property”** means Park Place West.

1.24 **“This Declaration”** means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including the provisions of any supplemental declaration annexing property to Park Place West.

1.25 **“Turnover Meeting”** means the meeting called by Declarant pursuant to Section 8.7 below, at which Declarant will turnover administrative responsibility for the Property to the Association.

## Article 2.

### **Property Subject to this Declaration**

2.1 **Initial Property.** Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration as of Park Place West:

All real property within that certain plat entitled “Park Place West,” filed in the plat records of Rockwall County, Texas, Cabinet F, pages 263-266.

2.2 **Annexation of Additional Property.** Declarant may from time to time and in its sole discretion annex to Park Place West as Additional Property any real property now or hereafter acquired by it, and may also from time to time and in its sole discretion permit other holders of real property to annex the real property owned by them to Park Place West. The annexation of such Additional Property shall be accomplished as follows:

(a) The Owner or Owners of such real property shall record a declaration that shall be executed by or bear the approval of Declarant and shall among other things, describe the real property to be annexed; establish land classifications for the Additional Property; establish any additional limitations, uses, restrictions, covenants and conditions that are intended to be applicable to such Additional Property; and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration.

(b) The Additional Property included in any such annexation shall thereby become a part of Park Place West and subject to this Declaration, and the Declarant and the Association shall have and shall accept and exercise administration of this Declaration with respect to such property.

(c) Notwithstanding any provision apparently to the contrary, a declaration with respect to any Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants and conditions with respect to such Additional Property as Declarant may deem to be appropriate for the development of the Additional Property.

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants and conditions with respect to such property as Declarant may deem to be appropriate for the development of such Additional Property.

(d) There is no limitation on the number of Lots or Living Units that Declarant may create or annex to Park Place West except as may be established by applicable ordinances of the City of Rockwall. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be established by the City of Rockwall.

(e) Declarant does not agree to build any specific future Improvement, but does not choose to limit Declarant's right to add additional Improvements.

(f) Upon annexation to Park Place West, additional Lots so annexed shall be entitled to voting rights as set forth in Section 8.3 below.

(g) The formula to be used for reallocating the common expenses if additional Lots are annexed and the manner of reapportioning the common expenses if additional Lots are annexed during a fiscal year are set forth in Section 10.10 below.

2.3 **Improvements.** Declarant does not agree to build any Improvements on the Property other than as required by the City of Rockwall, but may elect, at Declarant's option, to build additional Improvements.

2.4 **Withdrawal of Property.** Property may be withdrawn from Park Place West only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the Initial Property or any Additional Property annexed pursuant to a declaration described in Section 2.2 above at any time prior to the sale of the first Lot in the plat of the Initial Property or, in the case of Additional Property, prior to the sale of the first Lot in the property annexed by the supplemental declaration, subject to the prior approval of the City of Rockwall. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Rockwall County, Texas. If a portion of the Property is withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated as provided in Section 10.10 below. Such right of withdrawal shall not expire except upon sale of the first Lot within the applicable phase of the Property as described above.

### **Article 3.**

#### **Land Classifications**

3.1 **Land Classifications Within Initial Property.** All land within the Initial Property is included in one or another of the following classifications:

(a) Lots, which shall consist of Lots 1 through 12 of Block A; Lots 1 through 12 of Block B; Lots 1 through 16 of Block C; Lots 1 through 46 of Block D; Lots 1 through 16 of Block E; Lots 1 through 44 of Block F and Lots 1 through 12 of Block G of the plat of the Initial Property.

(b) Common Areas, which shall be any area marked as Block X on the plat of the Initial Property.

(c) Common Easement Areas, which shall be any easements established on the plat of the Initial Property or in any recorded document for project entrance signage or landscaping or otherwise benefiting the Lots.

3.2 **Conversion of Lots to Common Areas.** Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Rockwall County, Texas. Such declaration shall be executed by Declarant as Owner of the Lots.

### **Article 4.**

#### **Property Rights in Common Areas**

4.1 **Owners' Easements of Enjoyment.** Subject to provisions of this Article, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot. The use of Limited Common Areas, however, shall be limited to the Owners and invitees of the Lots designated in the declaration establishing the Limited Common Area.

4.2 **Common Easement Areas.** Common Easement Areas shall be reserved for signage and associated landscape features. Such areas are to be maintained by the Association, and no changes in landscaping will be permitted within such areas without written authorization by the Board of Directors. No building, wall, fence, paving, landscaping or construction of any type shall be erected or maintained by any Owner, except Declarant, so as to trespass or encroach upon the Common Easement Areas, nor may any such areas be used by the Owner for stormwater treatment purposes.

4.3 **Title to Common Areas.** Title to the Common Areas and Limited Common Areas shall be conveyed to the Association by Declarant, free and clear of monetary liens, on or before the Turnover Meeting. Title to Common Easement Areas, subject to the easements set forth in this Declaration, shall rest in the Owners of the respective Lots within which such areas are located, or to the public if part of dedicated street rights-of-way.

4.4 **Extent of Owners' Rights.** The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and to all other provisions of this Declaration:

(a) **Association Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Maintenance Areas:

(i) An easement for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property.

(ii) An easement for construction, maintenance, repair and use of such areas, including any common facilities thereon.

(iii) An easement for the purpose of making repairs to any existing structures on Common Areas.

(b) **Public and Utility Easements.** The Common Areas and Limited Common Areas shall be subject to such public and utility easements as may be established in any plat of the Property. In addition, Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

(c) **Use of the Common Areas.** The Common Areas shall be used for the purposes set forth in any plat of the Property and not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas or Common Easement Areas except as otherwise provided in this Declaration. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas identifying

the Property or identifying pathways or items of interest, signs restricting certain uses or warning signs, provided that such signs are approved by the Architectural Review Committee. The Board of Directors shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings. A declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use a particular Common Area or facility located on such Common Area. In such case, those Owners will not be required to share in the costs of maintaining the facility, as is more particularly described in Section 10.10.

(d) **Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least eighty percent (80%) of the Class A Association voting rights and the Class B member (as defined in Section 8.3 below), if any, have given their prior written approval and unless approved by Rockwall County. The Association shall first offer to dedicate such property to the city of Rockwall. This provision shall not apply to the easements described in Section 4.4(a) above. The Association, upon approval in writing of at least two-thirds of the Class A Association voting rights and the Class B member, if any, and if approved by order or resolution of the City of Rockwall, may dedicate or convey any portion of the Common Areas to a park district or other public body.

(e) **Limitations on Use.** Use of the Common Areas and Limited Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner to the extent provided in Article 11 below.

(ii) The rights of the Association to adopt, amend and repeal rules and regulations in accordance with this Declaration.

4.5 **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, his or her right of enjoyment of the Common Areas and Limited Common Areas to family members, tenants, invitees and guests, whose use shall be subject to this Declaration and the Rules and Regulations adopted under this Declaration.

4.6 **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas and Limited Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself and for the Owners of Lots in all future phases of the Property a perpetual easement and right-of-way for access over, upon and across the Common Areas and Limited Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant and future phases of the Property. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and Limited Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights

shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an Owner's Lot by that Owner or his or her family, tenants, employees, guests or invitees.

4.7 **Limited Common Areas**. The respective Limited Common Areas shall be subject to a reciprocal access easement for the use by the Owners of the benefited Lots for vehicular access and utilities serving such Lots. Such areas shall be operated, maintained, replaced and improved by the Association, but the entire cost thereof, including reserves for future maintenance, repairs and replacements, shall be assessed on an equal basis to the Owners of Lots to which such Limited Common Areas pertain.

## Article 5.

### **Property Rights In Lots**

5.1 **Use and Occupancy**. The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article 6 below, all other provisions of this Declaration and the provisions of any supplement or amendment to this Declaration.

5.2 **Easements Reserved**. In addition to any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

(a) **Adjacent Common Maintenance Area**. The Owner of any Lot that adjoins or blends together visually with any Common Maintenance Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Maintenance Area.

(b) **Right of Entry**. Declarant, the Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or Improvements of such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) **Utility Easements**. Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on any recorded plat. Within the easements, the Architectural Review Committee will not permit any structure, planting or other material to be placed or permitted to remain on the easement area if such structure, planting, or other material may damage or interfere with the installation or maintenance of utilities, change the direction of flow of drainage channels in the easements, or obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible, and except Common Easement Areas, which will be maintained by the Association.

5.3 **Minimum Lot Area** No Lot shall be resubdivided; provided, however, that Declarant shall have the right, at any time, or from time to time, upon and with the consent of the appropriate county and/or municipal authorities, and with the joinder and consent of the directly affected Owners, to file a replat of the plat to effect a resubdivision or reconfiguration of any Lots then owned by Declarant, so long as, such replat results in each resubdivided Lot containing not less than the minimum Lot size prescribed by the zoning ordinances of the City of Rockwall. Such Owners shall not unreasonably withhold or delay their joinder in or consent to the replat or amendments to the plat. The privilege to replat Lots owned by the Declarant reserved in this section shall belong exclusively to the Declarant.

## Article 6.

### **General Use Restrictions**

6.1 **Compliance with Applicable City and County Ordinances.** Notwithstanding the additional standards set forth in this Article 6 and set forth by the Board of Directors from time to time, at all times Owners must abide by all current and future city and county ordinances that apply to the Owners and their real and personal property (including trees), activities, guests and animals.

6.2 **Structures Permitted.** No structures shall be erected or permitted to remain on any Lot except structures containing a single detached Living Unit and structures normally accessory thereto, all of which shall have first been approved by the Architectural Review Committee pursuant to Article 7 below. Such provision shall not exclude construction of a private greenhouse, storage unit, or private swimming pool, provided that the location of such structure is in conformity with the applicable regulations of the City of Rockwall is compatible in design and decoration with the dwelling structure constructed on such Lot, and has been approved by the Committee. All structures and improvements shall conform to the architectural styles and construction materials approved by the Committee and the Declarant at the time Lots are sold or developed. All Living Units constructed shall contain a minimum of eleven hundred (1,100) square feet of air-conditioned floor area, exclusive of porches, garages, or breezeways attached to the Living Unit

6.3 **Residential Use.** Lots designated by the Declarant as residential on the (final plat for Park Place West) shall only be used for residential purposes. Except for certain Lots on block G specifically designated as combined residential and nonresidential Lots on the final plat of Park Place West or with the written consent of the Board of Directors, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any such Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units; (b) the right of Declarant or any contractor or home builder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home for purposes of sales or rental in Park Place West; and (c) the right of the Owner of a Lot to maintain his or her professional personal library, keep his or her personal business or professional records

or accounts, handle his or her personal business or professional telephone calls or confer with business or professional associates, clients or customers, in his or her Living Unit by appointment only. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable law.

6.4 **Second Living Quarters Permitted.** Notwithstanding Section 6.2 above, Owners shall be permitted to construct a second living quarters for occupation by the Owner or the Owner's guests, on their respective Lots. The second living quarters may be built attached to the primary residence or as a detached building. However, at no time may an Owner rent the second living quarters to any related or unrelated person or entity. Any second living quarters constructed by an Owner shall be in full compliance (including size limits) with all city and county building and other applicable codes, ordinances and laws.

6.5 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried out upon the Property, nor shall anything be done or placed on the Property that interferes with or jeopardizes the enjoyment of the Property, or that is a source of annoyance to Owners or occupants. No unlawful use shall be made of the Property or any part thereof: and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Owners and other occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, occupants, guests, or invitees, or directed at the managing agent, its agents or employees, or vendors.

6.6 **Animals.** All Owners must abide by all current and future applicable city and county animal ordinances. In addition, no animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Lot other than a reasonable number of household pets that are not kept, bred or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of their respective Owners. No animal shall be permitted to roam the Property unattended, and each dog shall be kept on a leash while outside a Lot. Dog runs and doghouses shall be fully screened or fenced from view from any Lot, and shall not be visible from the street. All animals shall be controlled so as not to be a nuisance to any Owner. Any unrestrained or barking dog shall constitute a nuisance. An Owner or occupant will be required to remove a pet upon receipt of the third written notice from the Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

6.7 **Maintenance of Structures.** Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and perimeter fences and other exterior Improvements and glass surfaces. All repainting or restaining, any change in type of roof or roof color and any exterior remodeling or changes shall be subject to prior review and approval by the Committee. Damage caused by fire,



flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

#### 6.8 **Maintenance of Landscape.**

(a) Each Owner shall jointly and severally, have the duty and responsibility, at their sole cost and expense, to keep the Lot so owned, including buildings, structures, improvements, grounds, drainage easements or other rights-a-way incidental thereto, and vacant land, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance shall include, but is not limited to, the following: (i) prompt removal of all trash, refuse and waste; (ii) lawn maintenance and mowing, on a regular basis of all portions of the Lot not being maintained by the Association; (iii) pruning of trees and shrubs; (iv) watering landscaped areas; (v) maintain exterior lighting and other facilities and fixtures in working order; (vi) maintaining in good repair all parking areas, driveways, curbs and roads; (vii) comply with all governmental health and safety requirements and all Association rules and regulations; (viii) repair all exterior damage to structures and improvements; and (ix) keep lawn and garden areas alive, watered, free of weeds, trash and maintained in an attractive fashion.

(b) If, in the opinion of the Board of Directors, any Owner has failed in any of the foregoing duties or responsibilities, the Association may give such Owner written notice of such failure and such Owner shall have ten (10) days after receiving such notice, to perform the repairs and maintenance or make arrangements with the Association for making the repairs and maintenance required.

(c) If, at any time an Owner fails to fulfill the maintenance and repair responsibilities after receiving such notice from the Association, the Association or its agent shall have the right to enter the Owners Lot for the purpose of making the appropriate repairs or performing the needed maintenance. All costs incurred by the Association in exercising this right shall be assessed to and collected from the Owner of the Lot, and such Owner shall reimburse the Association within thirty (30) days of receiving the Assessment.

6.9 **Parking.** Except as may otherwise be provided in the Rules and Regulations of the Association, overnight parking of boats, trailers, motorcycles, commercial vehicles, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and overnight parking of any other vehicles with a gross vehicle weight in excess of 9,000 pounds shall not be allowed on any part of the Property or on public streets within the Property, excepting only within areas designated for such purposes by the Board of Directors. Vehicles may not be used for storage of materials for more than forty-eight (48) hours without approval from the Committee. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 11.1(c) below. On street parking shall be limited to approved deliveries, pick-up or short-time guests and invitees. Overnight guests must park in the driveway or garage of the Living Unit in which they are visiting or in areas specifically designated for such guests by the Board of Directors. No inoperable vehicles, or vehicles not utilized on a daily basis shall be permitted to be parked in a driveway.

6.10 **Vehicles in Disrepair.** No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot (unless kept in a

closed garage view) or on a Common Area or any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an “extreme state of disrepair” when the Board of Directors reasonably determines that its presence offends the occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him or her by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 11.1(c) below.

6.11 **Signs.** No signs, flags or flag poles shall be placed, erected or maintained on any Lot except that (i) not more than one “For Sale” or “For Rent” sign placed by the Owner, Declarant, or a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long and of a style approved by the Architectural Review Committee, may be temporarily displayed on any Lot, and two such signs may be placed on a Lot during the course of initial construction of a dwelling on such Lot; (ii) the patriotic display of flags not exceeding thirty-six (36) inches by forty-eight (48) inches in size may be displayed on customary holidays of the State of Texas or the United States of America. The restrictions contained in this paragraph shall not prohibit the temporary placement of “political” signs on any Lot by the Owner, subject to reasonable regulations adopted by the Architectural Review Committee relating to size placement and length of display.

6.12 **Mailboxes and House Number Signs** Mailboxes and house number signs must be uniform in type, style, size and materials specifically approved by the Declarant and the Committee. Mailboxes and house number signs must be located in approved locations by the Declarant and the Committee.

6.14 **Rubbish and Trash.** No part of the Property shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view, except during garbage pickup days. Each Lot Owner shall make or cause to be made appropriate arrangements for the regular removal of trash, garbage and yard debris on a regular basis. Each Owner shall observe and comply with any and all regulations and requirements promulgated by the City of Rockwall, the State of Texas or the federal government and the Association in connection with the storage and removal of trash, garbage and yard debris. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Lots, streets or Common Maintenance Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any other such materials from any streets or the Property where deposited by such person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner. No Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses in accordance with the time tables herein and in the construction contract. No garbage, trash, debris or waste of any kind shall be burned on any Lot or Common Area of the Property.

6.15 **Construction.** The construction of any building on any Lot, including painting and all exterior finish, shall be completed within eight (8) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to strikes, fires, national emergency or natural calamities, this provision may be extended for a reasonable length of time upon approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage can or other garbage disposal facility on the site during such period. Debris may not be deposited on any other Lot. All construction debris must be periodically removed from each Lot by the builder or Owner, and such debris shall not be dumped in any area within the Property unless approved by the Architectural Review Committee. If construction has not commenced upon any Lot within one (1) year after acquisition thereof by the Owner, the Owner shall install the sidewalk and landscape the area within twenty (20) feet from the curb within thirty (30) days thereafter. The Owner shall irrigate and maintain this area. The Architectural Review Committee may waive this requirement if it determines that construction will commence within a reasonable time. In any case, all unimproved or unoccupied Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed ( to a height of less than six (6) inches) at sufficient intervals to prevent creation of a nuisance or fire hazard.

6.16 **Landscape and Irrigation Systems.**

(a) The landscaping requirements set forth in this Declaration (including front and rear yards and parking strips) shall be completed within thirty (30) days from the date of occupancy of the Living Unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon approval of the Committee. Landscaping must include at least grass and bark dust. Landscape plans (including original plans, alterations, changes and additions) shall be submitted to the Architectural Review Committee for approval. No tree or shrub with a trunk in excess of three (3) inches in diameter may be cut down or removed without the approval of the Committee. Each Lot on which a Living Unit is constructed shall have an underground irrigation system for the purpose of providing adequate water to all parts of the property, including lawns, shrubs, trees, ornamental plants and gardens of all types.

(b) The Association shall develop and implement a landscape design and maintenance program for all Common Areas. In addition the Association shall develop maintain and implement a landscape maintenance program designed to maintain the front and side yards (to the nearer of the rear of the Living Unit or intervening fence) of all Lots. Such landscaping program shall include periodic mowing, edging, and regular fertilization of lawns, but shall not include a program or plan to maintain trees, shrubs, ornamental plants and gardens of all types, which shall be the responsibility of each Owner of a Lot (the "Lot Landscape Maintenance Program"). Other than the landscaping and maintenance covered by the program developed by the Association for Common Areas and the Lot Landscape Maintenance Program, each Owner shall be responsible for maintaining his or her own lawn and landscaping (in-front and in back of the Living Unit) in a healthy and attractive condition, which shall include all trees, shrubs, ornamental plants, and gardens of all types on such Owner's Lot.

6.17 **Tree Preservation.** The following tree protection requirements shall be applicable to the trees located in Tract \_\_ and along the perimeter of the Initial Property: (a) tree topping, tree removal, or pruning of more than twenty percent (20%) of the foliage is not permitted; (b) tree houses, tree forts and similar structures are not permitted; (c) broadcast irrigation shall be avoided within ten (10) feet of the trunk of such trees, but low volume irrigation is permitted; (d) use of vegetation with low water requirements is encouraged near such trees; and (e) turf grass may not be installed within ten (10) feet of the trees.

6.18 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently. Portable basketball hoops are prohibited.

6.19 **Fences, Hedges and Walls.** No fence, hedge, structure, wall, or retaining wall shall be constructed or exist anywhere on any Lot without prior approval of the Committee. No planting or structure obstructing vision at driveways or intersections shall be permissible or maintained. The design, construction materials and location of all retaining walls must be reviewed and approved by the Committee. Notwithstanding the foregoing, no railroad ties, concrete blocks, or brick may be used to construct retaining walls. All retaining walls shall be constructed in accordance with the grading plan prepared by the Declarant. Once constructed no retaining wall shall be altered, modified or removed without the prior written consent of the Committee. No fence or wall shall be erected, placed or altered on any Lot without the prior written approval of the Committee. The design and materials used in the construction of the fence shall be subject to the prior written approval of the Committee. No fence, wall or hedge shall be erected, placed or altered on any Lot nearer to any street than the minimum setback line indicated in the final plat, unless otherwise permitted by the Committee and in accordance with the applicable rules and regulations of the City of Rockwall. All side and rear yard fencing shall be of metal, vinyl or masonry (no wood or chain link fencing will be allowed) and shall not exceed six (6) feet in height. Front fences shall not exceed three (3) feet in height and shall be constructed of vinyl or metal and must be approved in writing by the Committee. If garden walls are of masonry, they must be compatible with the masonry on the house (either brick or stone), and be on adequate concrete foundations. Lots that abut a Common Area (Lots 1 through 6 in Block A, Lots 1 through 12 in Block B, Lots 21 through 24 in Block D, Lots 32 through 46 in Block D, Lots 7 through 12 in Block E, and Lots 14 through 16 in Block F of the plat) must install only wrought iron fence in accordance with written guidelines for such fences developed by the Declarant or the Architectural Review Committee prior to the sale of any Lots.

6.20 **Service Facilities and Utilities.** Service facilities (garbage containers, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property. All telephone, power, natural gas, cable television and other communication lines shall be placed underground, except as otherwise mandated by local jurisdictions or public utility companies. Each Living Unit situated on a Lot shall be connected, at the sole expense of the Owner or builder, to the water and sewer lines as soon as practicable after same are available at the lot line. No privy, cesspool, or septic tank shall be placed or maintained upon or in any Lot. The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except for portable gas barbeque grills), must be approved in writing and under any conditions imposed by the Committee. Any control boxes,

valves, connections, utility risers or refilling or refueling devices shall be completely hidden from view of the street or any adjoining Lots or Common Areas.

6.21 **Antennas, Satellite Dishes and Basketball Goals/Hoops.** No exterior antennas, satellite receiver and transmission dishes and other communication devices shall not be permitted to be placed upon any Lot. All radio or television wires or antennas must be built within the main structure and must not be visible from the outside of such structure. Notwithstanding the foregoing the Committee may provide written approval for small satellite dishes to be located on a structure if such satellite dish is not visible from the front of the structure. Basketball goals, hoops, backboards and nets shall be allowed to areas behind Living Units, and shall in no event be placed on the front façade of a Living Unit or in the area between the front of the Living Unit and the street or Lot adjacent thereto.

6.22 **Exterior Lighting or Noisemaking Devices.** Except with the written consent of the Committee, no exterior lighting, including landscape lighting, or noisemaking device shall be installed or maintained on any Lot. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations established by the Board of Directors and if removed within thirty (30) days after the celebrated holiday. Further and notwithstanding any prior written consent, upon being given notice by the Committee any exterior light (including holiday lighting and decorations) or noisemaking device is objectionable, the Owner of the Lot on which the same is located will immediately remove said lighting, decoration or noisemaking device.

6.23 **Pest Control.** No Owner shall permit any thing or condition to exist upon any portion of the Property that will induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin.

6.24 **Setback, Maximum Height and Minimum Yard Requirements.** Each Lot shall be subject to the setback, and minimum yard requirements set by the City of Rockwall, which may be modified by an approved variance by the City of Rockwall, and by the prior written approval of the Committee. No Lot may be subdivided or partitioned, nor may its Lot lines be adjusted (except by Declarant in accordance with Section 5.3 above), without the approval of the City of Rockwall and the Committee. Notwithstanding the foregoing, an Owner owning two or more adjoining Lots may consolidate such Lots into a single building location for the purpose of constructing one (1) Living Unit thereon (the plans and specifications therefore being subject to the review and written approval of the Committee); provided, however, any such consolidation must comply with the rules, ordinances and regulations of any governmental authority having jurisdiction over the Lots and the Board of Directors. In the event of such a consolidation, the consolidated Lots shall be deemed to be a single Lot for purposes of applying the provisions of this Declaration; provided, however, the Owner of the consolidated Lots shall continue to pay assessments on such Lots as if such Lots had not been consolidated. All other provisions of this Declaration shall apply to the consolidated Lots. No structure or building on any Lot shall exceed the maximum height requirements of the City of Rockwall, and in no event shall such structure or building exceed three (3) stories without the written approval of the Declarant and the Committee.

6.25 **Grades, Slopes Drainage and Removal of Dirt.** Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the prior approval of the Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken that may damage or interfere with established slope ratios, create erosion or sliding problems, or obstruct, change the direction of, or retard the flow of water through drainage channels. The digging of dirt or the removal of any dirt or soil from any Lot is prohibited, except as necessary in conjunction with the landscaping, construction or improvements thereon, and in no event shall any such dirt or soil be deposited on a vacant Lot or Common Area within the Property without the prior written approval of the respective Lot Owner or the Board of Directors. Minimum finish floor elevations, if any, established in the plat shall be maintained.

6.26 **Garages and Carriage Home/Guest Quarters.** Garages shall be used primarily for parking of vehicles, and only secondarily for storage. Each Living Unit on any Lot shall provide garage space for a minimum of two (2) conventional automobiles. All garage doors shall be equipped with automatic and remote controlled garage door openers, and shall be closed at all times when not in use. Detached garages and detached quarters (of any kind) must be approved in writing by the Committee. No carport shall be allowed on any Lot. As used herein the term "carport" shall not include a porte cochere. No garage shall be altered or converted for any purpose inconsistent with garaging of automobiles without the written consent of the Committee. Porte Cocheres must be approved in writing from the Committee.

6.27 **Windows, Decks, Porches and Outside Walls.** To preserve the attractive appearance of the Property, the Association may regulate the nature of items that may be placed in or on windows, decks, porches, and the outside walls so as to be visible from the street or Common Areas. Garments, rugs, laundry and other similar items may not be hung from windows, facades, porches, or decks. No window or wall type air-conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any structure on any part of the Property.

6.28 **Leasing and Rental of Living Units.** No Owner may lease or rent his or her Living Unit for a period of less than six (6) months. All leases or rentals shall be by written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Rules and Regulations, Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease. If the Board of Directors finds that a lessee or tenant has violated any provision of such documents or the Rules and Regulations, the Board may require the Owner to terminate such lease or rental agreement. Other than the foregoing, there is no restriction on the right of any Owner to lease or rent his Living Unit.

**6.29 Exterior Construction Materials.**

(a) The exterior surfaces of all houses shall be of stone, brick, cement based siding, stucco, or glass. Columns and porches must be of painted wood or other materials approved in writing by the Committee. Notwithstanding the foregoing, either the Declarant or

the Committee may provide exceptions to these requirements in an effort to harmonize the appearance of the Property.

(b) Construction of a Living Unit shall include a concrete walk and curb the width of the lot, matching the width and locations of existing walks and curbs and in conformity with the overall site plans of Park Place West.

(c) All roofs shall be constructed of 3-tab composition shingles, manufactured slate, standing seam or metal shingles all with a minimum of a twenty-five (25) year life expectancy. The Committee may only approve roofing materials which are of a quality consistent with the external design, color, durability and appearance of other improvements within the Property. The roof pitch of any portion of the roof of the house shall be six (6) feet by twelve (12) feet minimum. Any deviation of roof pitch must be approved in writing by the Committee. Exterior paint, stain and stucco colors shall be subject to the written approval of the Committee.

(d) No above ground-level swimming pools shall be installed on any Lot.

(e) No projections of any type shall be placed or permitted to remain above the roof of any Living Unit with the exception of one or more chimneys and one or more vent stacks without the written approval of the Committee.

6.29 **Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory Rules and Regulations governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Board of Directors promptly to each Owner. The Rules and Regulations may be adopted by the Board of Directors, except as may be otherwise provided in the Bylaws of the Association.

## Article 7.

### **Architectural Review Committee**

7.1 **Architectural Review.** No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee, except that Declarant shall not be required to obtain such approval for Improvements commenced, erected, placed or altered by Declarant. The building plans to be submitted shall consist of one complete set of plans and specifications in the usual form showing insofar as appropriate, (i) the size and dimensions of the Improvements, (ii) the exterior design; (iii) approximate exterior color scheme; (iv) location of Improvements on the Lot, including setbacks, driveway and parking areas; and (v) location of existing trees to be removed. These plans and specifications shall be left with the Committee until sixty (60) days after notice of completion has been received by the Committee. This is for the purpose of determining whether, after inspection by the Committee, the Improvement

complies substantially with the plans and specifications that were submitted and approved. The Architectural Review Committee is not responsible for determining compliance with structural and building codes, ordinances, zoning codes or any other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing an application. In all cases in which the Architectural Review Committee's consent is required by this Declaration, the provisions of this Article shall apply, except that this Article shall not apply to construction by Declarant.

7.2 **Committee Decision.** The Architectural Review Committee shall render its decision with respect to a construction proposal within thirty (30) calendar days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within forty-five (45) calendar days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

7.3 **Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the Design Guidelines or design standards that the Committee intends for Park Place West. It is the intent and purpose of this Declaration to ensure quality of workmanship and materials, to ensure harmony of external design with the existing Improvements and with respect to topography and finished grade elevations and to ensure compliance with the setback requirements contained in the conditions of approval of the City of Rockwall. Considerations such as siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots, or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation, and any other factors that the Committee reasonably believes to be relevant may be taken into account by the Committee in determining whether or not to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes shall be in conformance with any applicable Federal Communications Commission rules.

7.4 **Membership: Appointment and Removal.** While the Declarant is an Owner, the Architectural Review Committee shall consist of as many persons, but not less than two, as Declarant may from time to time appoint. Declarant may, at its discretion, remove any member of the Committee from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee or in the event that the Declarant is no longer an Owner, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or, if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.



7.5 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

7.6 **Liability.** Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, and the Association shall indemnify the Committee and its members therefrom, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

7.7 **Nonwaiver.** Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

7.8 **Appeal.** At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors pursuant to Section 7.4, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors within fifteen (15) working days after receipt of such notification.

7.9 **Effective Period of Consent.** The Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been substantially commenced in the judgment of the Architectural Review Committee and thereafter diligently pursued, or unless the Owner has applied for and received an extension of time from the Committee.

7.10 **Estoppel Certificate.** Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrance, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

7.11 **Enforcement.** If during or after the construction the Architectural Review Committee finds that construction does not comply with the approved plans, the Committee may

require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required and has not been obtained or waived in writing. If an Owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 7.8, either the Architectural Review Committee or the Association may enforce compliance in accordance with the procedures set forth in Section 11.1 below.

## **Article 8.**

### **Association**

Before conveyance of the first Lot, Declarant shall organize an association of all of the Owners within Park Place West. Such Association, and its successors and assigns, shall be organized as a Texas nonprofit corporation under the name "Park Place West Homeowners Association," and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Lots located therein.

8.1 **Organization**. Declarant shall, before the first Lot is conveyed to an Owner, organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Texas. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event, the assets of the Association shall be dedicated to a public body, or all of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

8.2 **Membership**. Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership; shall expire automatically upon termination of such ownership; and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 **Voting Rights**. The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**Class B.** The Class B member shall be Declarant and shall be entitled to three votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When all of the Lots in the final phase of development of Park Place West have been sold and conveyed to Owners other than a successor Declarant;

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

8.4 **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Texas.

(c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with its provisions, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Texas.

8.5 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, all of the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 6.29 of this Declaration.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association,

including, without limitation, enforcement of the decisions of the Architectural Review Committee. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as managers; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific litigation or claim matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of this Declaration.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration, and subject to Section 4.4(d) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including, but not limited to, easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within Park Place West conveyed to the Association by Declarant.

(h) **Transfer, Dedication and Encumbrance of Common Area.** Except as otherwise provided in Section 4.4(d) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) **Create Classes of Service and Make Appropriate Changes.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefore to the users of such services, including, but not limited to, reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other Rules and Regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(j) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be inferred from the existence of any right or privilege

expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

8.6 **Liability.** Neither a member of the Board of Directors nor an officer of the Association shall be liable to the Association, any Owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer of the Association is threatened with or made a party to any proceeding because the individual was or is a director or officer of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law. The managing agent of the Association, and its officers and employees, shall not be liable to the Association, the Owners or any third party on account of any action or failure to act in the performance of its duties as managing agent, except for acts of gross negligence or intentional acts, and the Association shall indemnify the managing agent and its officers and employees from any such claims, other than for gross negligence or intentional misconduct.

8.7 **Interim Board; Turnover Meeting.** Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the Turnover Meeting following termination of Class B membership. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership in accordance with Section 8.3 above. At the Turnover Meeting the interim directors shall resign and their successors shall be elected by the Owners, as provided in this Declaration and in the Bylaws of the Association. If Declarant fails to call the Turnover Meeting required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

8.8 **Contracts Entered into by Declarant or Before Turnover Meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by Declarant or the Board of Directors on behalf of the Association before the Turnover Meeting shall have a term of not more than three (3) years. In addition, any such contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) days' notice to the other party given not later than sixty (60) days after the Turnover Meeting.

8.9 **Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Rockwall County, Texas. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as Exhibit A to this Declaration.

## Article 9.

### **Maintenance, Utilities and Services**

9.1 **Maintenance and Lighting of Common Maintenance Areas.** The Association may provide exterior lighting for and shall perform all maintenance upon the Common Maintenance Areas, including, but not limited to, landscaping, irrigation, walks, private roads, entrance monuments, gates, fences, walls, signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in attractive condition and in a good and workmanlike manner to render them fit for the purposes for which they are intended.

9.2 **Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of all private utilities within Common Maintenance Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. The Association shall not be liable for any interruption or failure of such services. Each Owner shall be responsible for maintaining utility lines within his Lot other than serving the Common Maintenance Areas.

9.3 **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association, any managing agent retained by the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, and no representation or warranty is made that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, any managing agent retained by the Association, Declarant, and any successor Declarant are not insurers and that each person using the Property assumes all risks for loss or damage to persons, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefor.

9.4 **Services.** The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, including, without limitation, landscape services, garbage and trash removal for Common Maintenance Areas and security services.

9.5 **Owner's Responsibility.** Except as otherwise provided in Section 9.6 below or by written agreement with the Association, all maintenance of the Lots and Improvements thereon as provided in Section 6.7 above shall be the sole responsibility of the Owner thereof, who shall maintain such Lot and the portion of the street right-of-way between the Lot and the street in a neat and attractive condition in accordance with the community-wide standard of Park Place West. The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard.

Before assuming such maintenance responsibilities, the Board of Directors shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within fifteen (15) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 11.5 below. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 10.8 and 11.1 below.

9.6 **Association's Responsibility.** Mowing the grass and trimming the bushes on each Lot from the street to the front façade of any living structure will be the responsibility of the Association. In addition, the Association will be responsible for the maintenance of any trees installed by the Association.

9.7 **Damage Liability.** Any damage to any Common Maintenance Area by Owners, their children, agents, visitors, friends, relatives, tenants, occupants or service personnel shall be repaired by the Owner within fifteen (15) days following the date on which notice is mailed by the Association informing the Owner of such violation. If the damage has not been repaired within such time, then the Association shall perform such repair and the cost shall be assessed to the Owner as an Individual Assessment.

## **Article 10.**

### **Assessments**

10.1 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Property and for the improvement, operation and maintenance of the Common Maintenance Areas.

10.2 **Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, Limited Common Area Assessments, Working Fund Assessments and Individual Assessments, all as more particularly described below.

#### 10.3 **Apportionment of Assessment.**

(a) **Lots Owned by Declarant.** Lots owned by Declarant shall not be subject to Annual Assessments (including assessments for reserves), Special Assessments, Limited Common Assessments or Emergency Assessments until such time as an occupancy certificate is issued for the Living Unit located on the Lot. Declarant, however, may defer payment of the accrued reserve assessments for a Lot from the time a Lot becomes subject to assessment until the date the Lot is conveyed, but not beyond the date of the Turnover Meeting or, if no Turnover Meeting is held, the date the Owners assume administrative control of the Association. The books and records of the Association shall reflect the amount owing from Declarant for all reserve Assessments.

(b) **Other Lots.** Any Lots other than Lots owned by Declarant shall be subject to assessment and shall pay an equal share of the Annual Assessments, Special

Assessments and Emergency Assessments. Notwithstanding the provisions of this section, however, a supplemental declaration annexing a specific Common Area facility may specify a special allocation of assessing the costs of operating and maintaining the facility on such Common Area in order to more fairly allocate such cost, taking into account the extent of use or other factors. Declarant may elect to delay collection of Annual Assessments against all Lots, but in such case shall pay all common expenses of the Association until such Assessments commence. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use of enjoyment of any or the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

10.4 **Annual Assessments.** The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall take into account the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law, but not less than the reserves required by Section 10.12 below. Annual Assessments for such operating expenses and reserves ("**Annual Assessments**") shall then be apportioned among the Lots as provided in Section 10.3 above. Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

10.5 **Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("**Special Assessment**"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Special Assessments shall be apportioned as provided in Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.



10.6 **Emergency Assessments.** If the Annual Assessments levied at any time are or will become inadequate to meet all expenses incurred under this Declaration for any reason that is outside of the control of the Association, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("**Emergency Assessment**"). Emergency Assessments shall be apportioned as set forth in Section 10.3 above and payable as determined by the Board of Directors.

10.7 **Limited Common Area Assessments.** Annual Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or Improvements to Limited Common Areas ("**Limited Common Area Assessments**") shall be assessed exclusively and on an equal basis to the Lots having the right to use such Limited Common Areas.

10.8 **Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited ("**Individual Assessment**"). Individual Assessments include, without limitation, charges for services provided under Sections 8.5(i) and 9.5 and any common expense that the Board of Directors determines is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

10.9 **Working Fund Assessments.** Upon the first sale of a Lot to a purchaser other than a successor Declarant and upon any subsequent sale of such Lot, the purchaser shall pay to the Association a Working Fund Assessment equal to three times the monthly Annual Assessment (i.e., one-fourth of the Annual Assessment) then applicable to the Lot (the "**Working Fund Assessment**"). The Board of Directors may deposit Working Fund Assessments either in the Operations Fund or in the Reserve Fund, at the discretion of the Board.

10.10 **Annexation of Additional Property.** When Additional Properties are annexed to Park Place West, the Lots included therein shall become subject to Assessments from the date of such annexation to the extent provided in Section 10.3. The Board of Directors, however, at its option may elect to recompute the budget based upon the additional Lots subject to assessment and additional Common Areas and recompute Annual Assessments for all Lots, including the new Lots, for the balance of the fiscal year. Notwithstanding any provision of this Declaration apparently to the contrary, a declaration annexing Additional Property may provide that such Additional Property does not have the right to use a particular Common Area or facility located thereon, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Common Area or facility.

10.11 **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.12 or Working Fund Assessments deposited in the Reserve Fund as described in Section 10.9, separate and apart from its other funds, in a bank account in the State of Texas in the name of the Association to be known as the “**Operations Fund.**” All expenses of the Association shall be paid from the Operations Fund or from the Reserve Fund referred to in Section 10.12. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Maintenance Areas and of the Lots situated upon the Property, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services as described in Article 9.

(b) Payment of the cost of insurance as described in the Bylaws of the Association.

(c) Payment of taxes assessed against the Common Areas and any improvements thereon.

(d) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including, but not limited to, accounting, legal and secretarial services.

10.12 **Reserve Fund.**

(a) **Establishment of Account.** Declarant shall conduct a reserve study as described in paragraph (c) of this section and establish a bank account in the State of Texas in the name of the Association (the “**Reserve Fund**”) for replacement of common properties that will normally require replacement in whole or in part in more than three (3) and less than thirty (30) years, for exterior painting if the Common Maintenance Areas or other property to be maintained by the Association include exterior painted surfaces, and for other items, whether or not involving Common Maintenance Areas, if the Association has responsibility to maintain the items. The Reserve Fund need not include those items that could reasonably be funded from operating Assessments or for those items for which one or more Owners are responsible for maintenance and replacement under the provisions of this Declaration or the Bylaws.

(b) **Funding of Reserve Fund.** The Reserve Fund shall be funded by Assessments against the individual Lot assessed for maintenance of the items for which the Reserve Fund is being established, which sums shall be included in the regular Annual Assessment for the Lot. The Reserve Fund shall also include Working Fund Assessments to the extent so allocated by the Board of Directors pursuant to Section 10.9. The Reserve Fund shall be established in the name of the Association. The Association is responsible for administering the Reserve Fund and making periodic payments into it.

(c) **Reserve Studies.** The reserve portion of the initial Assessment determined by Declarant shall be based on a reserve study described in this paragraph (c) or

other sources of information. The Board of Directors annually shall conduct a reserve study, or review and update an existing study, to determine the Reserve Fund requirements and may adjust the amount of payments as indicated by the study or update and provide other reserve items that the Board of Directors, in its discretion, may deem appropriate. The reserve study shall include:

(i) Identification of an items for which reserves are to be established by the reserve study;

(ii) The estimated remaining useful life of each item as of the date of

(iii) The estimated cost of maintenance, repair or replacement of each item at the end of its useful life;

(iv) A thirty (30) year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

(d) **Use of Reserve Fund**. The Reserve Fund shall be used only for the purposes for which the reserves have been established and shall be kept separate from other funds. After the Turnover Meeting, however, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet unexpected increases in expenses if the Board of Directors has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board of Directors shall adopt by resolution a written payment plan providing for repayment of the borrowed funds within a reasonable period. Nothing in this section shall prohibit prudent investment of the Reserve Fund. In addition to the authority of the Board of Directors under paragraph (c) of this section, following the second year after the Turnover Meeting, the Association may elect to reduce or increase future Assessments for the Reserve Fund by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association and may, on an annual basis by a unanimous vote, elect not to fund the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Owners of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.13 **Creation of Lien and Personal Obligation of Assessments**. Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys' fees imposed pursuant to Section 11.5, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

10.14 **Voluntary Conveyance.** In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an Owner or Owner's agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through at date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

## **Article 11.**

### **Enforcement**

11.1 **Violation of General Protective Covenants.** In the event that any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or violates any provisions of this Declaration, the Bylaws, or the Rules and Regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard as provided in the Bylaws and within fourteen (14) days after issuing written notice to the Owner, then the Association acting through its Board of Directors shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item that is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration or of the Rules and Regulations to be towed and impounded at the Owner's expense;

(d) Suspend the voting rights, any utility services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Living Unit; and

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

11.2 **Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from his Lot.

(b) The Association shall have a lien in accordance with applicable laws and regulations against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot and may foreclose such lien in accordance with applicable laws and regulations.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association shall have any other remedy available to it by law or in equity.

11.3 **Reports to First Mortgagees.** In response to a written request of any first mortgagee of a Lot, the Association shall report to such mortgagee whether such Lot is current or past-due with respect to Assessments.

11.4 **Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot, which was made in good faith and for value and that was recorded before the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien. but the sale or transfer of any Lot that is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an Assessment, notice of which was recorded after the recording of the mortgage or trust deed. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot from liability for any Assessments or charges

11.5 **Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate that is the greater of eighteen percent (18%) per annum or three percentage points per annum above the prevailing prime rate as of the due date as published in the Wall Street Journal, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Texas. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors,

which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien, established from time to time by resolution of the Board of Directors.

11.6 **Costs and Attorneys' Fees.** In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

11.7 **Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

11.8 **Enforcement by Rockwall County.** The provisions of this Declaration relating to preservation and maintenance of Common Areas shall be deemed to be for the benefit of Rockwall County as well as the Association and Owners of Lots, and Rockwall County may enforce such provisions by appropriate proceedings at law or in equity, or may cause such maintenance to be performed, the costs of which shall become alien upon the Property.

## **Article 12.**

### **Dispute Resolution**

#### **12.1 Mediation.**

(a) Except as otherwise provided in this section, before initiating litigation, arbitration or an administrative proceeding in which the Association and an Owner have an adversarial relationship, the party that intends to initiate litigation, arbitration or an administrative proceeding shall offer to use any dispute resolution program available within Rockwall County, Texas, that is in substantial compliance with the standards and guidelines adopted by the American Arbitration Association. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party.

(b) If the party receiving the offer does not accept the offer within ten (10) days after receipt of the offer, such acceptance to be made by written notice, hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the Association, for the other party, the initiating party may commence the litigation, arbitration or administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(c) If a qualified dispute resolution program exists within Rockwall County, Texas and an offer to use the program is not made as required under paragraph (a) of this section, then litigation, arbitration or an administrative proceeding may be stayed for thirty (30) days upon a motion of the noninitiating party. If the litigation, arbitration or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(d) Unless a stay has been granted under paragraph (c) of this section, if the dispute resolution process is not completed within thirty (30) days after receipt of the initial offer, the initiating party may commence litigation, arbitration or an administrative proceeding without regard to whether the dispute resolution is completed.

(e) Once made, the decision of the court, arbitrator or administrative body arising from litigation, arbitration or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(f) The requirements of this section do not apply to circumstances in which irreparable harm to a party will occur due to delay or to litigation, arbitration or an administrative proceeding initiated to collect Assessments, other than Assessments attributable to fines.

12.2 **Arbitration**. Any claim, controversy, or dispute by or among Declarant (including members, officers, directors, shareholders and affiliates of Declarant), Association, the Architectural Control Committee, or one or more Owners, or any of them, arising out of or related to this Declaration, the Bylaws of the Association, the Rules and Regulations, or the Property shall be first subject to mediation as described in Section 12.1 above or otherwise, and if not timely settled by mediation, resolved by arbitration in accordance with this Article 12. The decisions and award of the arbitrator shall be final, binding and nonappealable. The arbitration shall be conducted in the Dallas, Texas, metropolitan area, or at such other location as may be agreed upon by the parties, pursuant to the arbitration statutes of the State of Texas and any arbitration award may be enforced by any court with jurisdiction. Filing for arbitration must occur within 30 days after the failure of the parties to settle the matter through mediation .

12.3 **Selection of Arbitrator**. The arbitration shall be conducted by a single arbitrator qualified by the American Arbitration Association and selected by mutual agreement of the parties. The arbitrator selected shall be neutral and unbiased, except to the extent the arbitrator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the arbitrator within ten (10) days after a party's demand for arbitration, upon application of any party, the presiding judge of the District Court of Rockwall County, Texas shall designate the arbitrator.

12.4 **Consolidated Arbitration.** Upon demand by any party, claims between or among the parties and third parties shall be submitted in a single, consolidated arbitration.

12.5 **Discovery.** The parties to the arbitration shall be entitled to a 30-day period during which the parties may conduct such discovery as agreed to by the parties, or if the parties are unable to agree, as set forth by the arbitrator. The arbitrator shall have all of the authority of the court incidental to such discovery, including, without limitation, authority to issue orders to produce documents or other materials, to issue orders to appear and submit to deposition, and to impose appropriate sanctions including, without limitation, award against a party for failure to comply with any order.

12.6 **Evidence.** The parties to the arbitration may offer such evidence as they desire and shall produce such additional evidence as the arbitrator may deem necessary for an understanding and determination of the dispute. The Federal Rules of Evidence will apply to determine if evidence offered is admissible. All evidence shall be taken in the presence of the arbitrator and all of the parties, except when any of the parties is absent in default or has waived its right to be present.

12.7 **Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation or arbitration under this Article 12 (but shall be subject to the applicable provisions of Section 12.8 below): (a) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by the Association (other than disputes as to the validity or amount of such fees, Assessments, fines or charges, which disputes shall be subject to mediation/arbitration as provided above); and (b) actions to enforce any order, decision or award rendered by arbitration pursuant to this Article 12. The filing of a lis pendens or the application to any court for the issuance of any provisional process or similar remedy described in the Texas or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the procedures specified in this Article 12.

12.8 **Costs and Attorneys' Fees.** The fees of any mediator and the costs of mediation shall be divided and paid equally by the parties. Each party shall pay its own attorneys' fees and costs in connection with any mediation. The fees of any arbitrator and the costs of arbitration shall be paid by the nonprevailing party or parties; if none, such fees and costs shall be divided and paid equally by the parties. Should any suit, action or arbitration be commenced in connection with any dispute related to or arising out of this Declaration, the Bylaws or the Rules and Regulations; to obtain a judicial construction of any provision of this Declaration, the Bylaws or the Rules and Regulations; to rescind this Declaration; or to enforce or collect any judgment or decree of any court or any award obtained during arbitration, the prevailing party shall be entitled to recover its costs and disbursements, together with such investigation, expert witness and attorneys' fees incurred in connection with such dispute as the court or arbitrator may adjudge reasonable, at trial, in the arbitration, upon any motion for reconsideration, upon petition for review, and on any appeal of such suit, action or arbitration proceeding. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorneys' fees incurred before and during the arbitration proceeding) and by the court or courts, including any appellate or review court, in which such matter is tried, heard or decided, including a court that hears a request to compel or enjoin arbitration or that hears exceptions made to an arbitration



award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in such proceedings).

12.9 **Survival**. The mediation and arbitration agreement set forth in this Article 12 shall survive the transfer by any party of its interest or involvement in the Property and any Lot therein and shall survive the termination of this Declaration.

### **Article 13.**

#### **Mortgagees**

13.1 **Reimbursement of First Mortgages**. First mortgagees of Lots may, jointly or singly, pay taxes or other charges that are in default and that may have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association, to the extent the same was the responsibility of the Association.

13.2 **Right of First Mortgagees Relating to Maintenance**. At any time that the Common Areas are not maintained or repaired by the Association to the extent reasonably necessary to protect and preserve the value of the Property for security purposes, then the record mortgagee, upon giving written notice as provided in this paragraph, shall be entitled to exercise the rights of the Owner of the Lot as a member of the Association to vote at all regular and special meetings of the members of the Association for a period of one year following the date of such notice. During this one-year period, the Association shall give notice of all regular and special meetings to both the Owner and the mortgagee, and the Owner may attend such meetings as an observer. Notice from the mortgagee under this section shall quote this Section 13.2 and shall be sent postage prepaid by certified United States mail, return receipt requested, to the Owner with a copy sent by regular mail to the Association at the last-known address of each.

### **Article 14.**

#### **Amendment and Repeal**

14.1 **How Proposed**. Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

14.2 **Approval Required**. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Lots, based upon one vote for each such Lot, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which

any Lot is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas or private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the zoning administrator of the City of Rockwall.

14.3 **Recordation.** Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Rockwall County, Texas of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration, and acknowledged in the manner provided for acknowledgment of deeds.

14.4 **Regulatory Amendments.** Notwithstanding the provisions of Section 14.2 above, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration~ the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Texas, or any corporation wholly owned, directly or indirectly, by the United States or the State of Texas that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

## Article 15.

### **Miscellaneous Provisions**

15.1 **Lessees and Other Invitees.** Lessees, employees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself or herself.

15.2 **Nonwaiver.** Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

15.3 **Construction; Severability; Number; Captions.** This Declaration shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

15.4 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail with postage prepaid, addressed as follows: If to Declarant or the Association, 1200 East Washington, Rockwall, Texas 75087; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

15.5 **Private Agreement.** This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Park Place West. This Declaration does not restrict the City of Rockwall's authority to adopt or amend its development regulations. There may be conflicting requirements between this Declaration and regulations of the City of Rockwall. The City of Rockwall will limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot and/or Improvement in Park Place West to know the requirements of this Declaration and the covenants and agreements contained herein. In the event there is a conflict between a regulation of the City of Rockwall and this Declaration, any question regarding which provision controls shall be directed to the Architectural Review Committee. The City of Rockwall will not be liable for any approvals or permits that are granted in compliance with the regulations of the City of Rockwall, Rockwall County, the State of Texas or any other jurisdiction, but that are not in compliance with this Declaration. Declarant, the Architectural Review Committee and/or the Association will not be liable for any approvals that are granted in compliance with this Declaration, but that are not in compliance with the regulations of the City of Rockwall, Rockwall County, the State of Texas or any other jurisdiction.

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