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H.E. OPHIR RES (OFFICE)

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
CAT HOLLOW  
PHASE II

THE STATE OF TEXAS

§

COUNTY OF BRAZOS

§

WHEREAS BC&C ENTERPRISES, a general partnership, acted for herein by its managing partner, R. WAYNE COTTER, hereinafter called the Declarant, is the owner of that real property in Brazos County, Texas, which is more fully described on Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Declarant desires to convey the Property subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth; and

WHEREAS, Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, liens and charges, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and which shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof; and (ii) that each contract or deed that may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions and restrictions regardless of whether or not the same are set out or referred to in said contract or deed.

ARTICLE I.  
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.01 Architectural Committee. "Architectural Committee" shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of Improvements on the Property.

1.02 Architectural Committee Rules. "Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as the same may be amended from time to time.

1.03 Articles. "Articles" shall mean Articles of Incorporation of Cat Hollow Phase II Homeowners Association, Inc., as that instrument may be amended from time to time, which instrument is filed in the office of the Secretary of State of the State of Texas.

1.04 Assessment. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of this Declaration.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
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1.05 Association. "Association" shall mean Phase II Cat Hollow Homeowners Association, Inc., a Texas non-profit corporation, which shall have authority and responsibility for all of the communities and subdivisions of Cat Hollow Phase II, as hereafter defined.

1.06 Board. "Board" shall mean the Board of Directors of the Association. Board members may, but need not be Members of the Association.

1.07 Bylaws. "Bylaws" shall mean the Bylaws of the Association as adopted by the Board, and from time to time amended.

1.08 Common Areas. "Common Areas" shall mean any land conveyed, leased, dedicated or assigned by Declarant, or by a third party with the Association's consent, to the Association for maintenance and operation, including, but not limited to, easements, roads, entry ways, water detention and drainage, roadways, rights-of-way, parkways, median strips, sidewalks, parks, trails, paths, ponds, creeks and lakes within the Property.

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1.09 Declarant. "Declarant" shall mean BC&C ENTERPRISES, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of BC&C ENTERPRISES as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.10 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

1.11 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including, but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.12 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on a recorded plat of the Property, together with all Improvements located thereon.

1.13 Member. "Member" or "Members" shall mean any person(s), entity, or entities holding membership rights in the Association.

1.14 Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.

1.15 Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.16 Owner. "Owner" or "Owners" shall mean a person or persons, entity or entities, including Declarant, holding a fee simple interest in any Lot on the Property, but shall not include a Mortgagee.

1.17 Person. "Person" or "Persons" shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.

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1.18 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including, but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

1.19 Cat Hollow Phase II. "Cat Hollow Phase II" shall mean one "community", or subdivision, consisting of the Property, known as Cat Hollow Phase II, but excluding the Cat Hollow Subdivision created by plat recorded in Volume 2295, page 79, Official Records of Brazos County, Texas. The Declarant, or the Board, shall have the authority to declare other tracts subject to the same or similar residential restrictions, and to award membership in the Association to lot owners of other subdivisions, or to merge with other Associations, on terms acceptable to the Board.

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1.20 Cat Hollow Phase II Residential Restrictions. "Cat Hollow Phase II Residential Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with the Cat Hollow Phase II Rules, Architectural Committee Rules and the Articles and Bylaws of the Association as the same are in effect from time to time.

1.21 Cat Hollow Phase II Rules. "Cat Hollow Phase II Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

## ARTICLE II. DEVELOPMENT OF THE PROPERTY

A. Development by Declarant. Declarant may divide or subdivide the Property into several areas, develop some of the Property, and, at Declarant's option, sell any portion of the Property free of the restrictions set forth in this Declaration.

B. Addition of Land. Declarant may, at any time and from time to time, add any other lands to the Property, and upon such addition, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall apply to the added land, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as they are with respect to the lands originally covered by this Declaration. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a notice of addition of land containing the following provisions:

- a. A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
- b. A statement that the provisions of this Declaration shall apply to the added land; and
- c. A legal description of the added land.

C. Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw areas from the Property, and upon such withdrawal, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to those lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a notice of withdrawal of land containing the following provisions:

0714231

- a. A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
- b. A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
- c. A legal description of the withdrawn land.

ARTICLE III.  
GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

A. Construction of Improvements. No Improvements shall hereafter be constructed upon any of the Property without the prior approval of the Architectural Committee.

B. Antennae and Signals. No antenna or other device for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot, whether attached to a building or structure or otherwise, without the prior written approval of the Architectural Committee, and under no circumstances shall an antennae be approved which is visible from any public street. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot so as to unreasonably interfere with the reception of television or radio signals on any other Lot.

C. Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon without the prior written approval of the Board.

D. Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee.

E. Signs. No sign of any kind shall be displayed to the public view on the Property without the prior written approval of the Architectural Committee, except for signs which are part of Declarant's overall marketing plan for the Property. The Architectural Committee may permit signs of any type advertising a portion of the Property for sale or lease or it may set standards for the same.

F. Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. If rubbish or debris accumulates upon any Lot in violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the Lot.

G. Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

0714231

H. Lighting. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable security or landscape lighting that has the approval of the Architectural Committee.

I. Nuisance and Lateral Support. No noxious or offensive activity or work shall be conducted upon any Lot so as to impair the structural soundness or integrity of any Improvement of any other Lot, or which may be or may become an annoyance or nuisance to the neighborhood.

3.10 Repair of Improvements. All Improvements upon the Property, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof.

3.11 Alteration or Removal of Improvements. Exclusive of normal maintenance, any construction or removal in connection with any Improvement which in any way alters the exterior appearance of said Improvement shall be performed only with the prior written approval of the Architectural Committee.

3.12 Roofing Materials. The surface of all roofs of principal and secondary structures shall be wood, shingle, shakes, tile or quality composition shingle. The Architectural Committee shall have authority to approve other roof treatments and materials when in its determination such treatments and materials in the form utilized will not be a detriment to the quality of the neighborhood.

3.13 Solar Equipment. In the event an Owner desires to use solar panels or other solar equipment in connection with the use of any Lot, the location and installation design thereof shall be submitted to the Architectural Committee and approval of such design, including the aesthetics thereof, shall be required before construction may begin.

3.14 Driveway and Garage. The Architectural Committee shall have the right to impose limitations on driveway and garage design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways within the Property, but front entry or "swing" entry garages shall generally be permissible, except in unique circumstances relating to the shape of the lot and house design, and the Architectural Committee's discretion in such matter shall be absolute.

3.15 Tanks. The Architectural Committee shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil or LPG and including swimming pool filter tanks. (No elevated tanks of any kind shall be erected, placed or permitted on any Lot). All tanks shall be screened so as not to be visible from any other portion of the Property.

3.16 Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on Improvements as approved in writing by the Architectural Committee, except what has already been constructed by the City of College Station, prior to April, 1993; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the Architectural Committee. The installation method, including but not limited to location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities, shall be subject to review and approval by the Architectural Committee.

3.17 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for property drainage and approved by the Architectural Committee.

0714231

3.18 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe and well designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

3.19 Mining and Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

3.20 Machinery and Equipment. Without the approval of the Association or Declarant, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Brazos County, Texas, in connection with the use, maintenance, or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association; provided however, such machinery or equipment may be placed, operated or maintained by any governmental or quasi-governmental agency, or by a public utility, in the performance of its legitimate functions.

3.21 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon the Property without the prior written approval of the Architectural Committee; provided however, that the Declarant may maintain or authorize temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen on the Property during any period of actual construction, which authorization, if given, shall include the nature, size, duration and location of such structure or structures.

3.22 Unightly Articles; Vehicles. No trailer, recreational vehicle, tent, boat, or stripped down, wrecked, junked, or wholly inoperable vehicle shall be kept, parked, stored, or maintained on any portion of the driveway or front yard in front of the building line of the permanent structure, and same shall be kept, parked, stored or maintained on other portions of a Lot only within an enclosed structure or a screened area which prevents the view thereof from adjacent Lots or streets. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street.

3.23 Mobile Homes, Travel Trailers. No mobile homes shall be parked or placed on any Lot at any time, and no travel trailers shall be parked on or near any Lot so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) hours.

3.24 Fences.

(A) No fence, wall, or hedge shall be built or maintained forward of the front wall line of the main structure, not including decorative walls or fences which are part of the architectural design of the main structure, and which are not to be built or maintained nearer than the building setback line of any lot. An exception shall be made in the case of retaining walls not to exceed twenty-four inches (24") above the ground. Notwithstanding the foregoing, the Architectural Committee is empowered to waive the aforesaid height or setback limitation in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material and the resulting decorative wall and/or retaining wall will not detract from the general appearance of the neighborhood. No chain-link fences may be built or maintained on any Lot.

(B) Unless otherwise approved by the Architectural Committee or as provided herein, any fence built or maintained on any Lot shall be constructed only of standard grade cedar privacy fence materials, six (6') feet in height, with the finished (smooth) side facing all streets, common areas, or

0714231

adjoining properties which are not part of Cat Hollow Phase II, and the rough side facing the interior of any Lot. All posts shall be set in concrete and buried at least eighteen (18) inches beneath the surface of the surrounding ground. All fences erected which face Glen Haven street shall be of standard grade cedar connecting between brick columns at least eighteen (18) inches square, erected at fifteen (15) foot intervals.

3.25 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on the Property. No domestic household pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets shall be allowed on the Property other than on the Lot of its Owner, except when confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No domestic household pet shall be allowed to run at large and all of such pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property. No more than two (2) adult dogs and two (2) adult cats may be kept on a single lot. All domestic household pets shall be kept in strict accordance with all local laws and ordinances.

3.26 Maintenance of Lawns and Plantings. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot cultivated, pruned, and free of trash and other unsightly material. Subject to Section 3.29 below, trees, shrubs, vines and plants that die shall be promptly removed. Declarant, the Association and the Architectural Committee shall have the right at any reasonable time after not less than four (4) days notice to Owner to cure any violation of this provision within such 10-day period, to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, and to charge the cost thereof to the Owner of the Lot as provided in Section 5.04(E) below.

3.27 Landscape Design. All landscaping shall be designed so as to protect and promote, as far as practicable, the natural local landscape environment through use of native materials, natural drainage, indigenous plant selection and site design. All landscaping designs shall:

- (A) Wherever possible, save and incorporate into the Plans and Specifications existing trees and trunk diameters of four (4) or more inches. To insure the viability of these trees, soil compacting, trenching and/or cut and fill shall be avoided, to the greatest extent possible, in the area defined by trees' dripline.
- (B) Maintain or enhance, wherever possible, existing vegetation within drainage easements to prevent erosion, siltation, or impediment of runoff augmented by development.
- (C) Install live, growing sod covering the front and side yards, within thirty (30) days of occupancy of any residence constructed on a Lot, and an equivalent substitute which achieves as satisfactory a ground cover in approximately the same period of time in the backyard, all such ground cover to be indigenous to the area, and maintained in a healthy and growing condition.
- (D) Install live, growing and healthy shrubs, bushes, vegetation and trees in the front yard on the Lot, within thirty (30) days of occupancy of any residence constructed on a Lot, which have a retail value for materials and labor equal to at least \$500.00. Existing indigenous shrubs, trees, bushes and vegetation shall not be included within this requirement, nor shall ground cover,

0714231

mulch, grass, or bed preparation. The Association may cure any default of this covenant in the manner provided in Article V hereof.

3.28 Construction and Sales Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property, or the sale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to commence Improvements, and then the material shall be placed within the property lines of the Lot upon which the Improvements are to be erected and shall not be placed on the street or on any other part of the Property. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction. At such time as the Declarant ceases using any portion of the Property as a model home or sales office, the affected Property shall be altered and/or remodeled, if necessary or desirable, to comply with the covenants and restrictions contained herein.

3.29 Mailbox. Mailboxes shall be erected and maintained on each Lot upon which a residence is situated, and shall be fixed on masonry stanchions (columns), approved by the Architectural Committee. No metal post stands shall be permitted. Each mailbox shall be new when installed, constructed of durable steel or aluminum, and of a size and shape conforming to postal authority standards for single family residential postal depositories. Mailboxes shall be located on the curb in accordance with postal regulations.

3.30 Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot within the area defined by a line drawn between two points located forty (40') feet from the point of intersection of the street right-of-way property lines immediately adjacent to the Lot, as reasonably located by the Architectural Committee. Measurement shall be by chord, not by arc. No tree shall be permitted to remain within such areas, unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

3.31 Garage conversions. No garage, or any portion thereof, may be converted into enclosed living space unless an alternative garage of at least equal size is constructed and the plans and specifications for the conversion and construction are first approved in writing by the Architectural Committee.

3.32 Windows and Doors. Doors and windows in any residence on any Lot shall comply with all of the requirements of Article 5.33A, Section 6(a)(1) of the Insurance Code of the State of Texas, as it now exists, which provisions are sometimes called Standard 1 guidelines for home security, the "Safe Home" program. Those guidelines are as follows:

- (A) Exterior doors must be solid core doors that are 1 3/4 inches thick and must be secured by dead-bolt locks. All dead-bolt locks must lock with a minimum bolt throw of 1 inch that penetrates a metal strike plate mounted with 3 inch screws.
- (B) Metal doors must be secured by dead-bolt locks.
  - 1. If glass is within 40 inches of a locking device, the lock must be key operated from both sides.
  - 2. Double doors must have the inactive door secured by header and threshold bolts that penetrate metal strike plates, and in the case of glass located within 40 inches of header and threshold bolts, the inactive door must have the bolts flush-mounted in the edge of the door.



0714231

3. Sliding glass doors must be secured by secondary locking devices to prevent lifting and prying.
4. Dutch doors must have concealed flush-bolt locking devices to interlock upper and lower halves and must be secured by a dead-bolt lock.
5. Garage doors must be equipped with key-operated locking devices.
6. Windows must be secured by auxiliary locking devices (screws, wooden dowels, pinning devices, or key-operated locks).
7. Windows and doors must be clear of exterior shrubbery.

If revisions are adopted in the statute referenced above by the Texas Legislature, such revisions may also be adopted herein, if such action is taken pursuant to Section 9.03 below.

3.33 Electronic Burglar Alarms. If any residence on any lot has an electronic burglar alarm system, such system shall comply with all of the requirements of Article 5.33A, Section 6(a)(2) of the Insurance Code of the State of Texas, as it now exists, which provisions are sometimes called Standard II guidelines for home security, the "Safe Home" program. Those guidelines are as follows:

- (A) All exterior structure openings are contacted (including non-opening windows).
- (B) The system includes an interior and exterior siren.
- (C) All equipment is U.L. approved and monitored by a U.L. approved central station.
- (D) Sales, service, installation, and monitoring of the system are done in compliance with the Private Investigators and Private Security Agencies Act.

3.34 Room and Board Plans. No Owner shall permit any Lot or Improvement on any Lot to be used in whole or in part by tenants on rooming or boarding plans or contracts, or both, of any type.

3.35 Compliance with Provisions of Cat Hollow Phase II Residential Restrictions. Each Owner shall comply strictly with the provisions of the Cat Hollow Phase II Residential Restrictions as the same may be amended from time to time. Failure to comply with any of the Cat Hollow Phase II Residential Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggrieved Owner. Declarant, for itself, its successors or assigns, reserves the right to enforce these restrictive covenants, though it may have previously sold and conveyed all subdivided Lots controlled by these covenants within the Property. The reservation of this right of enforcement shall not create an obligation of any kind to enforce the same.

3.36 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article III or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance upon one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

0714231

ARTICLE IV.  
RESIDENTIAL RESTRICTIONS

A. Residential Use. All Lots shall be improved and used solely for residential purposes inclusive of a garage, fencing and such other Improvements as are necessary or customarily incident to residential use. No Owner shall occupy or use his Lot or any Improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose, including religious, other than as a private residence for the Owner, his family and guests. All Lots within the Property shall be used and improved solely for single family residential purposes, with no more than one (1) attached residential dwelling unit per Lot. Anything herein to the contrary notwithstanding, any Lot may be used or improved for greenbelt, open space and/or drainfield purposes. No Improvement may be constructed upon any Lot that would unreasonably obstruct the view from other portions of the Property, and the positioning of all Improvements upon Lots within the Property is hereby expressly made subject to Architectural Committee review. The Architectural Committee may, but shall not be required to, prevent or allow the construction of a proposed Improvement based upon the effect it will have upon the view from any particular Lot. The Architectural Committee may consider the effect the Improvement will have on the Property as a whole, it being expressly understood that neither the Architectural Committee nor the members thereof shall be liable to any Owner in monetary damages or otherwise due to the construction of any Improvement within the Property or the creating thereby of an obstruction to the view from such Owner's Lot or Lots.

B. Outbuildings. Every outbuilding, inclusive of such structures as a detached garage, storage building or greenhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. All such buildings shall be subject to approval by the Architectural Committee. In no instance shall an outbuilding, other than a detached garage, exceed one (1) story in height or have total floor area in excess of ten percent (10%) of the floor area of the main dwelling.

C. Building Height. No Improvement greater than thirty-two (32) feet in height may be constructed on any Lot without the prior written approval of the Architectural Committee. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

D. Building Materials; Dwelling Size. All single family dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows, and similar openings) shall be constructed of at least seventy-five percent (75%) masonry or other material specifically approved in writing by the Architectural Committee. Masonry includes ceramic tile, brick, rock and all other materials commonly referred to in the College Station, Texas area as masonry. Unless an exception is granted by the Architectural Committee, all single family dwellings shall contain not less than two thousand (2000) square feet of enclosed living space for dwellings constructed on lots in all cases exclusive of porches (open or covered), decks, garages and carports. Each residence shall include an enclosed attached or detached garage or other structure sufficient to meet the requirements of Sections 3.14 and 3.22 above.

E. Construction in Place. The use of prefabricated materials, including antique homes moved from other locations, shall not be allowed.

F. Set-back Requirements. No building shall be located or erected nearer to any Lot line bordering a street right-of-way than the building line shown on the recorded plat of the Property subdivision section which includes such Lot. No building shall be located nearer than seven and one-half (7-1/2) feet to any interior side Lot lines. No building shall be located nearer than twenty (20) feet from any rear Lot line. Notwithstanding the foregoing, in respect to cul-de-sac Lots or Lots having irregular shapes, such building must be situated at a mean distance of at least seven and one-half (7-1/2) feet from each side property line of such Lot, but in no event closer at any one point than seven and one-half (7-1/2) feet from such side property lines. Furthermore, on such cul-de-sac Lots or Lots having irregular shapes, such structure may be constructed as near as twenty-five (25) feet from the rear of the Lot; provided further,

0714231

however, that detached garages may be as near as twenty (20) feet from the rear of the Lot and any permitted temporary structures may be situated as near as seven and one-half (7-1/2) feet from the rear of any such Lot. For purposes of these covenants, the eaves of buildings shall not be deemed to be part of a building or structure, but steps and porches shall be deemed to be a part of a building or structure. This Section shall not be construed to allow any building or structure to encroach upon another Lot.

ARTICLE V.  
CAT HOLLOW PHASE II OWNERS ASSOCIATION

A. Organization. Declarant has caused the formation and incorporation of the Association as a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

B. Membership. Any Person or entity upon becoming an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to the said property interest.

C. Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of directors to the Board on all other matters to be voted on by the Members shall be calculated as follows:

- (A) The Owner, whether one or more (including Declarant) of each Lot within the Property shall have one vote for each Lot so owned.
- (B) In addition to the votes to which Declarant is entitled by reason of Subparagraph (A) of this Section, for every such vote Declarant shall have three (3) additional votes, until such time as the votes described in Subparagraph (A) of this Section, owned by Owners other than Declarant, total in the aggregate sixty-six and two-thirds percent (66 2/3%) of the total number of votes outstanding under Subparagraph A. Thereafter Declarant shall have only the votes, if any, to which it is entitled under Subparagraph (A) of this Section.

D. Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to any limitations upon the exercise of such power as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the following powers and authority at all times:

- (A) Cat Hollow Phase II Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Cat Hollow Phase II Rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions.
- (B) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.
- (C) Records. To keep books and records of the Association's affairs.
- (D) Assessments. To levy Assessments as provided in Article VII below.

0714231

- (E) Right of Entry and Enforcement. To enter at any time in an emergency, or in a non-emergency, after ten (10) days written notice, without being liable to any Owner, upon any Lot and into any improvement thereon for the purpose of enforcing the Cat Hollow Phase II Residential Restrictions or for the purpose of erecting, maintaining or repairing any improvement to conform to the Cat Hollow Phase II Residential Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered on and improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of an on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Cat Hollow Phase II Residential Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Cat Hollow Phase II Residential Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

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- (F) Legal and Accounting Services. To retain and pay for Legal and accounting services necessary or proper for the operation of the Association.

- (G) Delegation to Committees. To set up one or more committees as authorized by the Texas Non-Profit Corporation Act, as the same is amended from time to time.

- (H) Employees. To engage such employees as may be reasonably necessary in the management of the Association and the performance of its duties.

E. Landscape and Maintenance. The Association shall be authorized to landscape, maintain and repair easements, rights-of-way, common areas, entry ways, sidewalks, paths, trails, detention ponds, lakes, and other areas of the Property, as appropriate.

F. Common Areas.

- (A) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:

- (1) To accept, own, operate and maintain all Common Areas which may be conveyed or leased to it by Declarant, together with any improvements of any kind or purpose located in said areas; and to accept, own, operate and maintain all other property, real and personal, conveyed or leased to the Association by Declarant; and to maintain in good repair and condition all lands, improvements, and other Association property owned by or leased to the Association, whether by Declarant or by other Persons.
- (2) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon individual Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (3) To execute mortgages, both construction and permanent, for construction of improvements on property owned by or leased to the Association, and to accept lands in Common Areas, whether or not improved, from Declarant subject to such mortgages or by

0714231

assuming such mortgages. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien, as deemed appropriate by borrower, whether Declarant or the Association, on the Improvement to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of Members, or otherwise, or any combination thereof, as may be deemed appropriate by Declarant or the Association, as the case may be, but subject to the limitations imposed by this Declaration.

(B) In addition to, and not in limitation of, the power and authority of the Association as set forth in Section 5.04 of this Declaration, the Association, acting through the Board, shall have the power and authority:

(1) To grant and convey portions of Association property, including fee title, leasehold estates, easements, right-of-way, and/or mortgages, to any person or entity for the purpose of constructing, erecting, operating or maintaining the following:

- (a) Parks, parkways or other recreational facilities or structures;
- (b) Roads, street, walks, driveways, trails and paths;
- (c) Lines, cables, wires, conduits, pipelines or other means of providing utilities;
- (d) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (e) Any similar public, quasi-public or private improvements.

Nothing contained in this Subparagraph, however, shall be construed to permit use or occupancy of any Common Area or Improvement in a way that would violate applicable use and occupancy restrictions imposed by other provisions of this Declaration, or by any statute, rule, regulation, ordinance or other law of any governmental entity, including but not limited to rules and orders of the Texas Water Development Board, Texas Water Commission, and any flood plain, industrial waste or other ordinance of the City of College Station.

- (2) To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association.
- (3) To pay for any other services necessary or proper in the performance of Association functions, and to pay for any other taxes or assessments that the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.
- (4) To own and operate any and all types of facilities for both active and passive recreation.
- (5) To construct new improvements or additions to Association properties, subject to the approval of the Architectural Committee as required in this Declaration.

0714231

- (6) To enter into contracts with Declarant and other persons, on such terms and provisions as the Board shall determine, to operate and maintain any of the Common Areas or to provide any service or perform any function on behalf of Declarant or the Association in connection with the purposes of the Association.
- (7) To acquire and own and to dispose of all manner of real and personal property, whether by purchase, grant, lease, gift or otherwise.
- (8) To merge with other associations having the same or similar purposes and objectives, or terms acceptable to the Board.

G. Agreement with City of College Station, and County of Brazos. The Declarant, as the agent of the Association, or the Association, may enter into one or more agreements with the City of College Station or State of Texas or both, with respect to the landscaping and maintenance of portions of street right of way, or the dedication of any drainage basin, park or other common area within the property for municipal maintenance. The Association shall accept, without further requirement or documentation, said agreement and the requirements and benefits associated therewith, for any agreement reached by the Declarant.

H. Indemnification. The Association shall indemnify any director, officer, or member of a committee duly appointed pursuant to the Articles or Bylaws who was, is, or is threatened to be made a named defendant or respondent in any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding (hereinafter a "Proceeding") by reason of the fact that such person is or was a director, officer or member of such a committee of the Association, against all judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with any such Proceeding to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time. Such authorization of indemnification shall be deemed to be mandatory and deemed to constitute authorization of indemnification and advancement of expenses to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time.

#### ARTICLE VI. ARCHITECTURAL COMMITTEE

A. Membership of Architectural Committee. The Architectural Committee shall consist of not more than three (3) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate. The following persons are hereby designated as the initial Voting Members of the Architectural Committee: R. Wayne Cotter, Rostell Chapman, and Craig P. Browne.

B. Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.

C. Advisory Members. The Voting Members may from time to time designate Advisory Members.

D. Term. Each member of the architectural Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed as provided herein.

E. Declarant's Rights of Appointment. Until Declarant has less than fifty percent (50%) of the votes in the Association (the Transition Date), Declarant, its successors or assigns shall have the right to appoint and remove all Voting Members of the Architectural Committee, which persons need not be drawn from Association Members. Notwithstanding the preceding sentence, Declarant may delegate its right of

0714231

appointment, or any portion thereof, to the Board by written instrument before such date. Whenever the Transition Date occurs, the Board shall have the right to appoint all Voting Members. At such time as the Board gains the right to appoint and remove Voting Members of the Architectural Committee, or any portion of this right, a majority of the Voting Members so appointed shall be drawn from Members of the Association. Advisory Members shall, when reasonably possible, be drawn from Members of the Association.

F. Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it deems necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, and other similar codes.

G. Review of Proposed Construction. Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications. Until receipt by the Architectural Committee of any information or document deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. Upon receipt of all necessary information, the Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other related duties assigned or authorized by this Declaration, including at its option inspection of construction in progress to assure its conformance with previously approved Plans and Specifications. The Architectural Committee shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one construction. The Architectural Committee may, in its review of Plans and Specifications and such other information as it deems proper, consider whether any proposed Improvement upon a Lot would unreasonably obstruct the view from other portions of the Property. The Architectural Committee may, but shall not be required to, disapprove any Improvement upon any Lot that would unreasonably obstruct the view from any other portion of the Property. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property and the surrounding area. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans and Specifications be deemed an endorsement, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes not of its authorship.

H. Actions of the Architectural Committee. The Architectural Committee may, by resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all the members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

I. No Waiver of Future Approvals. The approval or consent of the Architectural Committee of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any other Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

0714231

6.10 Work in Progress. The Architectural Committee may at its option inspect all work in progress to insure compliance with approved Plans and Specifications.

6.11 Nonliability of Architectural Committee Members. Neither the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its members, as the case may be. Neither the Architectural Committee nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots.

6.12 Address. Plans and Specifications shall be submitted to the Architectural Committee in care of R. Wayne Cotter, 110 Lincoln Drive, College Station, TX 77840, or in care of such other person at such other address as may be designated by Declarant or the Board, as the case may be, from time to time.

6.13 Failure to Act. In the event the Architectural Committee or its designated representative fails to approve or disapprove any Plans and Specifications within ten (10) days after the same have been submitted to it, complete with all other information requested by the Architectural Committee in connection with such submission, approval shall be assumed.

6.14 Variances. Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any individual Lot or Lots upon the Property, variance from any restrictions set out in this Declaration may be granted by a unanimous decision of the Architectural Committee in a written instrument to be duly acknowledged, if and when such a variance shall ever be granted.

6.15 Governmental Agency Approval. Nothing in this Declaration shall be construed to relieve any Owner from securing such approvals, certificates and/or permits as may be required by law in connection with the construction of any Improvements on any Lot.

6.17 Relationship with Association. The Architectural Committee has been created pursuant to this Declaration to perform certain functions specified herein relating to the review and approval of Plans and Specifications for Improvements built on the Property. The Architectural Committee does not exercise the authority of the Board, and shall not do so unless and until (i) the Board shall have duly appointed a majority of Board members to the Architectural Committee, and (ii) the Board shall by unanimous resolution, duly recorded in the records of the Association, make the Architectural Committee a committee of the Board in accordance with the Texas Non-Profit Corporation Act.

#### ARTICLE VII. FUNDS AND ASSESSMENTS

##### A. Assessments.

(A) The Association may from time to time levy Assessments against each Lot whether or not improved. The level of Assessments shall be equal and uniform between all Lots, provided, however, that no Assessments hereunder shall be levied against Declarant.

(B) Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.



0714231

(C) Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the owner of the Lot against which the Assessment falls due, and shall become a lien against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

B. Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

C. Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Cat Hollow Phase II Residential Restrictions, including but not limited to the cost of all entry ways, landscaping, greenbelts, common areas, median strip, and right-of-way maintenance, the cost of enforcing the Cat Hollow Phase II Residential Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's funds. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

D. Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under the Cat Hollow Phase II Residential Restrictions. The amount and due date of any special Assessments shall be at the reasonable discretion of the Board.

E. Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the owner of the Lot covered by such assessments. Except as otherwise provided in Section 7.01(A) hereof, no Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the owner of the Lot shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from due date thereof (or if there is no such highest rate, then at the rate of 1-1/2% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

F. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but paid, shall, together with interest as provided in Section 7.05 hereof and the cost of collection, including attorney's fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust filed of record, securing in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination shall be effectuated by an officer of the Association, duly authorized by the Board. To evidence an Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, and a description of the Lot. Such notice shall be signed by an officer of the Association, duly authorized by the Board, and shall be recorded in the office of the County Clerk of Brazos County, Texas. Such lien for

0714231

payment of Assessments shall attach with the priority above set forth from the date that such payment becomes delinquent, and may be enforced subsequent to the recording of a notice of Assessment lien as provided above, by the foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property, or the Association may institute suit against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee the status of any Assessments relating to the Mortgagee's mortgage and remaining unpaid for longer than thirty (30) days after due.

ARTICLE VIII.  
EASEMENTS

A. Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most effectively, efficiently and economically developing and marketing the property. Further, Declarant reserves the right, without the necessity of the joinder of any owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, common areas, rights-of-way and easements for public utility purposes (including, without limitation, gas, cable, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, any such easement having a maximum width of seven and one-half (7-1/2) feet on each side of such Lot line.

B. Installation and Maintenance. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, if any, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all improvements in such area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements herein or referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

C. Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees lawns or flowers. However, neither the Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity reasonably relating to the construction, maintenance, operation or repair of any facility in any such easement area.

D. Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of improvements approved by the Architectural Committee thereon require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no

0714231

construction of improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the Architectural Committee.

E. Blanket Easement. An easement is hereby retained in favor of the Association over all Lots and the Common Area for the purpose of enforcing the Cat Hollow Phase II Residential Restrictions in accordance with Section 5.04(E) hereof, and for the construction of a common cable television system, a common sprinkler system, maintenance of landscaping, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot or the Common Areas to effectuate the foregoing purposes shall not be deemed as trespass.

#### ARTICLE IX. MISCELLANEOUS

A. Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until March 1, 2030, unless amended as herein provided. After March 1, 2030, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive period of ten (10) years each, unless amended as provided in Section 9.03 below or terminated by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots within the property then subject to this Declaration, filed of record in the Official Records of Brazos County, Texas.

B. Dissolution. Upon termination of this Declaration in accordance with Section 9.01 above, the Association shall be dissolved. In the event of any such dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to any appropriate public agency to be used for purposes similar to those of the Association with respect to the Common Areas. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

C. Amendment.

(A) By Declarant. This Declaration may be amended by the Declarant, acting alone, until December 31, 2000, and thereafter for so long as Declarant holds a majority of the votes of the Association. No amendment by Declarant shall be effective until there has been recorded in the Official Records of Brazos County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the Secretary of the Association, certifying that the Declarant had the requisite number of votes.

(B) By Owners. In addition to the method in Section 9.03 (A), after December 31, 2000, this Declaration may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty percent (60%) of the number of votes entitled to be cast pursuant to Section 5.03 hereof.

D. Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

0714231

E. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

F. Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of Improvements, sales and leasing offices, and similar facilities, and to post signs incidental to construction, sales, and leasing anywhere within the Property.

G. Assignment of Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

H. Enforcement and Nonwaiver.

(A) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce any and all of the provisions of the Cat Hollow Phase II Residential Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

(B) Nonwaiver. The failure to enforce any provision of the Cat Hollow Phase II Residential Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

(C) Liens. The Association shall have the right, when appropriate in this judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

I. Construction.

(A) Restrictions Severable. The provisions of the Cat Hollow Phase II Residential Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

(B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.

(C) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles.

(D) Deadlines on Business Day. If any deadline in this Declaration should fall on a Saturday, Sunday or a Texas or federal holiday, such deadline shall automatically be extended to the next business day.

0714231

(E) Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this 27 day of April, 2000.

BC&C ENTERPRISES,

BY:

R. Wayne Cotter  
R. WAYNE COTTER, Managing Partner

STATE OF TEXAS

COUNTY OF BRAZOS

This instrument was acknowledged before me on the 27 day of April, 2000, by R. WAYNE COTTER, Managing Partner of BC&C ENTERPRISES, on behalf of said enterprise and in the capacity therein stated.

Terri L. Bostwick  
NOTARY PUBLIC, State of Texas



0714231

**EXHIBIT "A"**

Being 11.546 acres tract or parcel of land lying and being situated in the Richard Carter League, A-8, College Station, Brazos County, Texas, and being part of the 91.984 acres tract conveyed to Brazosland Properties, Inc. by F.W. "Bert" Wheeler, Trustee, in the deed recorded in Volume 485, page 499 of the Deed Records of Brazos County, Texas, and also being part of the 6.179 acres tract conveyed to the City of College Station by Brazosland Properties, Inc. in the Deed recorded in Volume 621, page 289 of the Official Records of Brazos County, Texas, and more particularly described as follows:

COMMENCING at a concrete right-of-way monument found marking the east corner of the 91.984 acres tract, said monument being located in the southwest right-of-way line of the State Highway No. 6 (East Bypass);

THENCE N 36° 09' 02" W along the northeast line of the 91.984 acres tract, same being the southwest right-of-way line of the State Highway No. 6 (East Bypass), for a distance of 65.00 feet to a 1/2 inch diameter iron rod set for the PLACE OF BEGINNING of the herein described tract of land;

THENCE across the 91.984 acres tract for the following calls:

S 65° 59' 17" W for a distance of 165.21 feet to a 1/2 inch diameter iron rod set for angle point;

S 44° 21' 39" W for a distance of 502.11 feet to a 1/2 inch diameter iron rod set for corner, said iron rod being located in the northeast right-of-way line of Glenhaven Drive;

THENCE N 45° 38' 21" W along the northwest right-of-way line of Glenhaven Drive for a distance of 753.13 feet to a 1/2 inch diameter iron rod set for corner;

THENCE N 53° 50' 43" E across the 91.984 acres tract and across the 6.179 acres tract, at a distance of 304.13 feet pass the southwest line of the 6.179 acres tract, continue for a total distance of 780.95 feet to a 1/2 inch diameter iron rod set for corner, said iron rod being located in the northeast line of the 91.984 acres tract, same being the northeast line of the 6.179 acres tract, same being the southwest right-of-way line of the State Highway No. 6 (East Bypass);

THENCE S 36° 09' 02" E along the northeast lines of the 91.984 acres tract and the 6.179 acres tract, same being the southwest right-of-way line of the State Highway No. 6 (East Bypass), at a distance of 119.84 feet pass a 1/2 inch diameter iron rod marking the east corner of the 6.179 acres tract, continue for a total distance of 694.84 feet to the PLACE OF BEGINNING of the herein described tract, containing 11.546 acres of land, more or less.

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SAVE AND EXCEPT:

All that certain tract of land, lying and being situated in the RICHARD CARTER LEAGUE, Abstract No. 8, College Station, Brazos County, Texas. Said tract being a portion of a called 11.546 acre tract as described by a deed to Billy Wayne Sharp recorded in Volume 1298, page 70 of the Official Records of Brazos County, Texas, and a portion of a called 6.179 acre tract as described by a deed to the City of College Station recorded in Volume 621, page 289 of the Official Records of Brazos County, Texas. Said tract being more particularly described by metes and bounds as follows:

BEGINNING: at a 5/8" iron rod found on the southwest right-of-way line of Texas State Highway No. 6, said iron rod marking the most easterly corner of Block 2, Cat Hollow, according to the plat recorded in Volume 2295, page 79 of the Official Records of Brazos County, Texas, for reference a concrete right-of-way marker found on the southwest line of Highway No. 6 bears: N 36 22' 06" W for a distance of 1432.11 feet;

THENCE: S 65 59' 05" W along the common line of said Block 2, Cat Hollow and said 11.546 acre tract for a distance of 165.12 feet to a 5/8" iron rod set marking an angle point in said common line (this line was used for bearing orientation honoring the plat call bearing of Cat Hollow, 2295/79);

THENCE: S 44 19' 29" W continuing along said common line for a distance of 163.31 feet to a 5/8" iron rod set marking the south corner of this herein described tract;

THENCE: N 36 22' 06" W through said 11.546 acre tract, at 532.61 feet pass the southeast line of said 6.179 acre tract, continue on for a total distance of 686.98 feet to a 5/8" iron rod set on the northwest line of said 11.546 acre tract;

THENCE: N 53 49' 11" E along the northwest line of said 11.546 acre tract and through said 6.179 acre tract for a distance of 322.46 feet to a 5/8" iron rod set on the southwest line of Highway No. 6 marking the north corner of said 11.546 acre tract;

THENCE: S 36 22' 06" E along the southwest line of Highway No. 6 at 119.84 feet pass the east corner of said 6.179 acre tract, continue on for a total distance of 694.84 feet to the POINT OF BEGINNING, containing 5.00 acres of land, more or less.

Filed for Record in:  
BRAZOS COUNTY,  
On: Apr 27, 2000 at 03:32PM

By a  
Recording

Document Number: 0714231

Amount: \$0.00

Receipt Number - 150594

By:  
Kathryn Sustarva

STATE OF TEXAS  
COUNTY OF

I hereby certify that this instrument was  
filed in the date and file stamped herein by me  
and was duly recorded in the volume and page  
of the said records of  
BRAZOS COUNTY,  
as stamped herein by me.

Apr 27, 2000

HOOPER KIM ANN REG. CLERK  
BRAZOS COUNTY, TEXAS  
Exhibit "A"  
Page 2 of 2