

Wise County  
HONORABLE Sherry Parker-Lemon  
COUNTY CLERK  
Decatur, Texas 76234



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**Comment: RESTRICTIONS**

( Parties listed above are for Clerks reference only )

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Sherry Parker-Lemon  
Wise County Clerk

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS**

**FOR**

**HIGHLAND OAKS  
Phase I  
Boyd, Wise County, Texas**

**Declarant**

**Boyd Highland Oaks, L.P.**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HIGHLAND OAKS ADDITION**

THIS DECLARATION (herein so called) is made effective as the 15 day of March 2007,

By Boyd Highland Oaks, L.P. (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the owner of the real property known as Highland Oaks Addition, City of Boyd, Wise County, Texas, as referred to in Article II hereof and described on the Plat of the addition recorded at Cabinet C, Slide 485, Plat Records, Wise County, Texas, which is incorporated herein by reference made a part hereof for all purposes; and

WHEREAS, Declarant desires to create thereon a residential community with residential lots, open spaces, landscaping, sprinkler systems, and other common improvements for the benefit of the community; and

WHEREAS, Declarant desires to provide for, among other matters, the preservation of the values and amenities in said community and for the maintenance of said open spaces, landscaping, sprinkler systems, cabana, swimming pool, volleyball and basketball courts, streets, common lighting, fencing, drives, screening walls, and other common improvements; and, to this end, desires to subject the real property referred to in Article II, together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each and every owner of any part thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create a homeowners association to which would be delegated and assigned the powers of (i) maintaining and administering the common properties and facilities, (ii) administering and enforcing the covenants and restrictions contained herein, and (iii) collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused or will cause a non-profit corporation to be incorporated under the laws of the State of Texas for the purpose of effecting the intents and objectives herein set forth.

NOW, THEREFORE, Declarant declares that the real property referred to in Article I, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

**ARTICLE I  
DEFINITIONS**

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

- (a) "Architectural Review Committee" shall mean and refer to the Architectural Review Committee described in Article X hereof.
- (b) "Articles of Incorporation" shall mean and refer to the articles of incorporation of the Association as may be amended from time to time.
- (c) "Association" shall mean and refer to the Highland Oaks Homeowners Association also known as Boyd Highland Oaks H.A. Inc., a Texas non-profit corporation, which will have the power, duty and responsibility of maintaining and administering the Common Properties, and collecting and disbursing the assessments and charges hereinafter prescribed, and will have the right to administer and enforce the Covenants and Restrictions.
- (d) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- (e) "Class A Members" shall have the meaning set forth in Section 3.02
- (f) "Class B Members" shall have the meaning set forth in Section 3.02 hereof.
- (g) "Common Properties" shall mean and refer to those areas devoted to the common use and enjoyment of the Owners, and include the following: those certain landscaping improvements, plantings, screening walls and columns, fencing, cabana, swimming pool, volleyball & basketball courts, and sprinkler

systems, to be placed as shown on the Plat in the Highland Oaks Addition and those certain landscaping improvements, plantings, and sprinkler systems, to be placed along the common area adjacent to FM 730 and the surrounding county roads

(h) "Private Streets" shall mean the private streets known as Lot 1 Block L, as shown on the recorded plat of the Highland Oaks Addition.

Properties which are known, described or designated or which shall subsequently become known, described or designated as Common Properties intended for or devoted to the common use and enjoyment of the Owners, together with any and all improvements that are now or may hereafter be constructed thereon. In certain circumstances, Common Properties may not be owned by the Declarant or the Association in fee, but may, in some instances, be held as an easement, be leased or may simply be areas of land that are not owned or leased by the Declarant or the Association but which are maintained by the Association or the Declarant for the use and benefit of the Owners and the Properties. An example of areas of Common Properties which may not be owned or leased by the Association or the Declarant but would constitute a portion of the Common Properties would be landscaped areas appurtenant to and within public -rights-a-way. The Declarant may hold record title to all or a portion of the common Properties, consistent with the objectives envisioned herein and subject to the easement rights herein of the Owners to use and enjoy the Common Properties, for an indefinite period of time and at a point in time (deemed appropriate and reasonable by the Declarant) after the Association has been incorporated, record title to those portions of the Common Properties is which are owned by the Declarant in fee, as an easement or otherwise will be transferred from the Declarant to the Association. The specific Common Areas are Lot 1, Block B, Lot 9 Block C, Lot 8 Block D, Lot 1, Block E, Lot 1, Block K and Lot 1, Block L.

(i) "Declarant" shall mean and refer to Boyd Highland Oaks, L.P., and its successors and assigns, if such successors and/or assigns become same by operation of law, or should (i) such successors and/or assigns acquire all or substantially all of The Lots from Boyd Highland Oaks, L.P. for the purpose of development, and (ii) any such assignee receives by assignment from Boyd Highland Oaks, L.P. all or a portion of its rights hereunder as such Declarant, by an instrument expressly assigning such rights of Declarant to such assignee. No person or entity purchasing one or more Lots from Boyd Highland Oaks, L.P. in the ordinary course of business shall be considered as "Declarant".

(j) "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Properties, as amended from time to time, which is designated as a lot thereon and which is or will be improved with a residential dwelling. Some portions of the Common Properties may be platted as a "lot" on the recorded subdivision plat, however, these lots shall be excluded from the concept and definition of lot as used herein.

(k) "Member" shall mean and refer to each Owner as provided in Article III hereof.

(l) "Owner" shall mean and refer to every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to this Declaration. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

(m) "Properties shall mean and refer to the properties subject to this Declaration, together with such additions as may hereafter be made thereto (as provided in Article II).

#### ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

**2.01 Existing Properties.** The Properties which are, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration are located in Boyd, Wise County, State of Texas, and are more particularly described on the recorded Plat for the Highland Oaks Addition, which are incorporated herein by reference for all purposes.

**2.02 Additions to Properties.** Additional land(s) may become subject to this Declaration in any of the following manners:

(a) The Declarant may add or annex additional real property to the scheme of this Declaration by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions ("Supplementary Declaration") which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property; provided, however, that such Supplementary Declaration may contain supplementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the

different character, if any, of the added properties and as are not materially inconsistent with this Declaration in a manner which adversely affects the concept of this Declaration.

(b) If any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such proposed annexation must have the prior written consent and approval of the majority of the outstanding votes within each voting class of the Association.

(c) Any additions made pursuant to paragraphs (a) and (b) of this Section 2.02, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added.

(d) The Declarant shall have the right and option (without the joiner, approval or consent of any person or entity) to cause the Association to merge or consolidate with any similar association then having jurisdiction over real property located (in whole or in part) within one half (1/2) mile of any real property then subject to the jurisdiction of the Association. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and Restrictions established by this Declaration with the Properties together with the covenants and restrictions established upon any other properties as one scheme.

(e) Notwithstanding the fact that the Declarant may not be a Class A or Class B Member by virtue of its sale, transfer or conveyance of all of its right, title, and interest in the Properties, the Declarant shall continue to be entitled to implement and exercise all its rights under and pursuant to this Section 2.02 and all of the subsections hereof. Even though the Declarant may not be a Class A or Class B Member prior to an annexation, merger or consolidation permitted by this Section 2.02, subsequent to such annexation, merger or consolidation, the Declarant shall be and become a Class B Member with respect to the Lots owned by it within the Properties, as such Properties have been expanded or increased by the annexation, merger or consolidation. The Declarant's rights as a Class B Member shall be governed by and set forth in this Declaration and the Articles of Incorporation and By Laws of the Association, as same may be amended or altered by, and in accordance with, the annexation, merger or consolidation.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

**3.01 Membership.** Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to this Declaration.

**3.02 Classes of Membership.** The Association shall have two (2) classes of voting membership:

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

CLASS B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to eight (8) votes for each Lot which Declarant holds the interest required for membership. Class B Members shall be Declarant and any bona fide owner, which is engaged in the process of constructing a residential dwelling on any lot for sale to consumers. Declarant shall be entitled to eight (8) votes for each Lot owned by all Class B Members. Class B Members other than Declarant shall be non-voting Members of the Association. The Declarant shall vote for all Class B Members. The Class B membership shall cease, and each Class B Member shall become a Class A Member upon the earlier to occur of the following:

(i) When the total of votes outstanding in the Class A membership is eight (8) times greater than the total number of votes outstanding in the Class B membership; or

(ii) Declarant no longer owns record title to any of the Lots; or

(iii) On the tenth (10th) anniversary of the date this Declaration as recorded in the Office of the County Clerk of Wise County, Texas.

Notwithstanding the voting rights within the Association, until the Declarant no longer owns record title to any Lot or the tenth (10th) anniversary of the date this Declaration was recorded in the Office of the county Clerk of Wise County, Texas, whichever occurs first in time, the Association shall take no action with respect to any matter whatsoever without the prior written consent of the Declarant.

Owners of exempt properties as described in Section 5.11 hereof shall be Members but shall not have voting rights.

### **3.03 Quorum, Notice and Voting Requirements.**

(a) Subject to the provisions of Paragraph (c) of this Section, any action taken at a meeting of the Members shall require the assent of the majority of all of the votes of those who are voting in person or by proxy, regardless of class, at a meeting duly called, written notice of which shall be given to all Members no less than ten (10) days nor more than fifty (50) days in advance.

(b) The quorum required for any action referred to in Paragraph (a) of this Section shall be as follows:

The presence at the initial meeting of Members entitled to cast, or of proxies entitled to cast, a majority of the votes of all Members, regardless of class, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Bylaws or this Declaration. If the required quorum is not present or represented at the meeting, one additional meeting may be called, subject to the notice requirement herein set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such second meeting shall be held more than sixty (60) days following the first meeting.

(c) As an alternative to the procedure set forth above, any action referred to in Paragraph (a) of this Section may be taken without a meeting if a consent in writing approving of the action to be taken, shall be signed by all Members.

(d) Except as otherwise specifically set forth in this Declaration, notice, voting and quorum requirements for all actions to be taken by the Association shall be consistent with its Articles of Incorporation and Bylaws, as same may be amended from time to time.

(e) During the period of time that the Association is unincorporated, the Declarant shall have the sole right and option to prescribe reasonable procedures for the meetings (if any) of the Members; provided, however, that prior to incorporation, without the written approval of the Declarant, no Member (other than Declarant) shall have a right to vote on any matter, or to call any meetings of the Members of the Association. Except as specifically set forth in this Declaration, notice, voting and quorum requirements for all action to be taken by the Association (as an incorporated entity) shall be consistent with its Articles of Incorporation and Bylaws, as same may be amended from time to time.

## **ARTICLE IV PROPERTY RIGHTS IN THE COMMON PROPERTIES**

**4.01 Members Easements of Enjoyment.** Subject to the provisions of Section 4.03 of this Article, every Member and every tenant of every Member, who resides on a Lot, and each individual who resides with either of them, respectively, on such Lot shall have a non-exclusive right and easement of use and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title of every lot; provided, however, such easement shall not give such person the right to make alterations, additions or improvements to the Common Properties.

**4.02 Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to and limited by the following:

- (a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties.
- (b) The right of the Association to enter into and execute contracts with parties (including the Declarant or an affiliate of the Declarant) for the purpose of providing maintenance for all or a portion of the common Properties or providing materials or services consistent with the purposes of the Association;
- (c) The right of the Declarant or the Association, subject to approval by written consent by the Member(s) having a majority of the outstanding votes of the Members, in the aggregate, regardless of class, to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or



utility company for such purposes and upon such conditions as may be agreed to by such Members;

(d) The right of the Declarant or the Association, at any time, to make such reasonable amendments to the plat of the Properties recorded in the Map Records of Wise County, Texas (the "Plat"), as it deems advisable, in its sole discretion. All Members are advised that a portion of the Common Properties may be located within the platted and dedicated public rights-a-way and in connection therewith the public shall have right of use and enjoyment of Common Properties located within the public rights-a-way; and

(e) With respect to any and all portions of the Common Properties, Declarant, until Declarant no longer owns record title to any Lot or the tenth (10th) anniversary of the date this Declaration was recorded in the Office of the County Clerk of Wise County, Texas, whichever is the first to occur, shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City of Boyd or any other governmental agency having appropriate jurisdiction over the Common Properties) to: (i) alter, improve, realign, dam, bridge, culvert and Common Properties; (ii) re-channel, realign, dam, bridge, bulwark, culvert and otherwise employ or utilize construction and/or engineering measures and activities of any kind or nature whatsoever upon or within the Common Properties; (iii) seek and obtain variances or permits of any kind or nature whatsoever upon or within the Common Properties; (iv) replat or redesign the shape or configuration of the Common Properties; and (v) seek and obtain any and all permits, licenses or exemptions from any and all governmental agencies exercising jurisdiction over the Common Properties and/or the uses or activities thereon.

**4.03 Minerals and Drilling** The owners of lots have no mineral rights, all mineral rights having been reserved by a prior owner of the Property. No individual lot may be used as a drill site. Although the entire Property is part of a pool for purposes of underground exploration and drilling, specific tracts in the pool area have been designated as drill sites. These sites are located within Lot 1 Block E as specifically shown on the Highland Oaks plat. Notice is hereby given that surface exploration and drilling activity may occur on the designated drilling sites in accordance with the Designated Drilling Sites Agreement dated August 20, 2001 as recorded as Document 98893, Volume 1101, Page 845 of the Wise County Records.

**4.04 Drill Sites** The Association acting through its Board of Directors, may enter into easement, license or lease agreements for the surface use of one or more drill sites on the Property, provided the use is for the benefit of the Association and the Residents. The land subject to such an agreement constitutes an area of responsibility to be maintained by the Association as a common area expense.

**4.05 Security** The Association may, but is not obligated to, maintain or support certain activities within the Property designated, either directly or indirectly, to improve safety in or on the Property. Each owner and resident acknowledges and agrees, for himself and guests, that Declarant, the Association, and its directors, officers, committees, agents and employees are not providers, insurers, or guarantors of security within the Property. Each owner and resident acknowledges and accepts his sole responsibility to provide security for his (her) own person and property, and assumes all risks for loss or damage to same. Each owner and resident further acknowledges that Declarant, the Association, and its directors, officers, committees, agents and employees have made no representations or warranty, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the property. Each owner and resident acknowledges and agrees that Declarant, The association, and its directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

**ARTICLE V  
COVENANTS AND ASSESSMENTS**

**5.01 Creation of the Lien and Personal Objection of Assessments.** Declarant, for each lot owned by it, hereby covenants and agrees, and each purchaser of any lot by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the lot), to pay to the Association (or to an entity or collection agency designated by the Association): (1) annual maintenance assessments or charges (as specified in Section 5.04 hereof), such assessments to be fixed, established and collected from time to time as herein provided; (2) special assessments for capital improvements and other purposes (as specified in Section 5.05 hereof), such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual special assessments levied against one or more Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of such Owner or Owners, his tenants (if applicable) and their respective family, agents, Guests and invitees, and not caused by ordinary wear and tear (as specified in Section 5.05 hereof), all of such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual maintenance, special capital, and special individual assessments described in this Section 5.01 (hereinafter, the "Assessment" or the "Assessments", together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon each lot against which any such Assessment is made. Each such Assessment, together with interest thereon, attorneys' fees, court costs, and other costs of collection thereof shall also be the continuing personal obligation of the Owner of such lot at the time when the assessment is due. Further, no Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his lot. Existing obligations of an Owner to pay assessments and other costs and charges shall not pass to bona fide first lien mortgagees which become Owners by reason of foreclosure proceedings or an action at law subsequent to the date the Assessment was due; provided; however, any such foreclosure proceeding or action at law shall not relieve such new Owner of such lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment.

**5.02 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for (i) the purpose of promoting the recreation, comfort, health, safety and welfare of the Members and/or the residents of the Properties; (ii) maintaining the Common Properties; (iii) enhancing the quality of life in the Properties and the value of the Properties; (iv) improving and maintaining the common Properties, the Properties, services, improvements and facilities devoted to or directly related to the use and enjoyment of the Common Properties, including, but not limited to, the payment of taxes on the Common Properties and insurance in connection therewith and the repair, replacement and additions thereto; (v) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (vi) carrying out the powers and duties of the Board of Directors of the Association as set forth in this Declaration and the Bylaws of the Association; (vii) carrying out the purposes of the Association as stated in its Articles of Incorporation; and (viii) carrying out the powers and duties relating to the Architectural Control Committee, after Declarant has delegated or assigned such powers and duties to the Association.

**5.03 Improvement and Maintenance of the Common Properties Prior to Assessments.** Initially, the improvement of the Common Properties shall be the responsibility of the Declarant and shall be undertaken by Declarant at its sole cost and expense with no right to reimbursement from the Association. After the initial improvements to the Common Properties are substantially completed and until the date of the Assessments formally commence, the Declarant, on behalf of the Association, shall have the responsibility and duty (but with right of reimbursement once Assessments begin) of maintaining the Common Properties, including, but not limited to, the payment of taxes on and insurance in connection with the Common Properties and the cost of repairs, replacements and additions thereto, and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties.

#### 5.04 Annual Maintenance Assessments.

(a) The Board of Directors shall determine the amount of the annual maintenance assessments for each year, which assessments may include a reserve fund for working capital and for maintenance, repairs and replacements of the Common Properties.

(b) Subject to the provisions of Section 5.04(c) hereof, the Board may increase the rate of annual maintenance assessments. The Board may, after consideration of current maintenance, operational and other costs and the future needs of the Association, fix the annual maintenance assessments for any year at a lesser amount than that of the previous year.

(c) An increase in the rate of the annual maintenance assessments as authorized by Section 5.04(b) hereof in excess of ten percent of the preceding year's annual maintenance assessments must be approved by the Members in accordance with Section 3.03 hereof.

(d) When the annual maintenance assessment is computed for Lots, all or a portion of such annual maintenance assessment shall be payable to the

Association by the Member according to the status of the Lot owned by such Member as follows:

(i) As to a Lot owned by a Class A Member, the full annual maintenance assessment shall be payable.

(ii) As to a Lot owned by a Class B Member, one-quarter (1/ 4) of the annual maintenance assessment shall be payable.

(e) Notwithstanding anything herein contained to the contrary, prior to January 1, 2008, the maximum annual maintenance assessment chargeable against any Lot for which a final assessment is payable shall not exceed \$525.00.

(f) The Board of Directors may provide that annual maintenance assessments shall be paid monthly, quarterly, semi-annually or annually on a calendar year basis. No later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall (i) estimate the total common expenses to be incurred by the Association for the forthcoming fiscal year, (ii) determine, in a manner consistent with the terms and provisions of this Declaration, the amount of the annual maintenance assessments to be paid by each Member, and (iii) establish the date of commencement of the annual maintenance assessments. Written notice of the annual maintenance assessments to be paid by each Member and the date of commencement thereof shall be sent to every Member, but only to one (1) Joint Owner. Each Member shall thereafter pay to the Association his annual maintenance assessment in such manner as determined by the Board of Directors.

(g) The annual maintenance assessments shall include reasonable amounts, as determined by the Members or by the Board, collected as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Properties. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited in a separate bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association. Assessments collected as reserves shall not be considered to be advance payments of regular annual maintenance assessments.

#### 5.05 Special Care Assessments and Special Individual Assessments.

(a) In addition to the annual maintenance assessments authorized in Section 5.04 hereof, the Board of Directors of the Association may levy in any calendar assessment year a special capital assessment for the purpose of (i) defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Properties or Common Properties, including the necessary fixtures and personal property related thereto (ii) maintaining portions of the Common Properties and improvements thereon, or (iii) carrying out other purposes of the Association; provided, however, that any such special capital assessment levied by the Association shall have the approval of the members in accordance with Section 3.03 hereof. Any special capital assessment levied by the Association shall be paid by the Members directly to the Association on such date or dates as determined by the Board of Directors. All such amounts collected by the Association may only be used for the purposes set forth in this Section 5.05 and shall be deposited by the Board of Directors in a separate bank account to be held in trust for such purpose. These funds shall not be commingled with any other funds of the Association. An initial amount of \$500 shall be charged to each Class A Member at the time title for the lot has been transferred for the purpose of establishing the Association Reserve Account.

(b) The Board of Directors of the Association may levy special individual assessments against one or more Owners for (i) reimbursement to the Association of the costs for repairs to the Properties or Common Properties and improvements thereto occasioned by the willful or negligent acts of such Owner or Owners and not ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against an Owner or Owners relative to such Owner's failure to comply with the terms and provisions of this Declaration the Bylaws of the Association or any rules or regulation promulgated hereunder. Any special individual assessment levied by the Association shall be paid by the Owner or Owners directly to the Association. All amounts collected by the Association as special individual assessments under this Section 5.05 shall belong to and remain with the Association.

**5.06 Uniform Rate of Annual Maintenance Assessments and Special Capital**

**Assessments.** Both annual maintenance assessments and special capital assessments (excepting there from special individual assessments) must be fixed at a uniform rate for all Lots, and is payable as set forth herein.

**5.07 Date of Commencement of Assessments; Due Dates; no Offsets.** The annual maintenance assessments provided for herein shall commence on the date fixed by the Board of Directors of the Association to be the date of commencement and, except as hereinafter provided, shall be payable monthly, quarterly, semi-annually or annually, in advance, on the first day of each payment period thereafter, as the case may be and as the Board of Directors shall direct. The first annual maintenance assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual maintenance assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual maintenance assessment provided for in Section 5.04 hereof as the remaining number of months in that year bears to twelve; provided, however, that if the date of commencement falls on other than the first day of a month, the annual maintenance assessment for such month shall be prorated by the number of days remaining in the month. The due date or dates, if to be paid in installments, of any special capital assessment or special individual assessment under Section 5.05 hereof shall be fixed in the respective resolution authorizing such assessments. All assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason.

**5.08 Duties of the Board of Directors With Respect to Assessments.**

(a) The Board of Directors of the Association shall fix the date of commencement and the amount of the annual maintenance assessment against each

Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

(b) Written notice of all assessments shall be delivered or mailed to every Owner subject thereto. Such notice shall be sent to each Owner at the last address provided by each Owner, in writing, to the Association.

(c) The omission of the Board of Directors to fix the assessments within the time period set forth above for any year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

(d) The Board of Directors shall upon demand at any time furnish to any Owner liable for said assessment a certified letter signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. The Board may make a reasonable charge for the issuance of such certificates.

**5.09 Non-payment of Assessment.**

(a) Delinquency. Any Assessment, or installment thereof, which is not paid in final when due shall be delinquent on the day following the due date (herein, "delinquency date") as specified in the notice of such Assessment. The Association shall have the right to reject partial payment of an Assessment and demand full payment thereof. If any Assessment or part thereof is not paid within ten (10) days after the delinquency date, the unpaid amount of such Assessment shall bear interest form and after the delinquency date until paid at a rate equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum lawful rate.

(b) Lien. The unpaid amount of any Assessment not paid by the delinquency date shall, together with the interest thereon as provided in Section 5.09(a) hereof and the cost of collection thereof, including reasonable attorneys' fees, become a continuing lien and charge on the Lot of the non-paying Owner,

which shall bind such Lot in the hands of the Owner, and his heirs, executors, administrators, devisees, personal representatives, successors and assigns. The lien shall be superior to all other liens and charges against the Lot, except only for tax liens and the lien of any bona fide first mortgage or first deed of trust note or hereafter placed upon such Lot. A subsequent sale or assignment of the Lot shall not relieve the Owner from liability for any Assessment made prior to the date of sale or assignment and thereafter becoming neither due nor from the lien of any such Assessment. The Board shall have the power to subordinate the lien securing the payment of any Assessment rendered by the Association to any other lien. Such power shall be entirely discretionary with the Board. As herein before stated, the personal obligation of the Owner incurred at the time of such Assessment to pay such Assessment shall remain the personal obligation of such Owner and shall not pass to such Owner's successors in title unless expressly assumed by them in writing. Liens for unpaid Assessments shall not be affected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his Lot. To evidence any lien, the Association shall prepare a written notice of 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 covered by such lien. Such notice shall be executed by one of the officers of the Association and shall be recorded in the Office of the County Clerk of Wise County, Texas.

(c) Remedies. The lien securing the payment of the Assessments shall attach to the Lot belonging to such non-paying Owner with the priority set forth in this Section. Subsequent to the recording of a notice of the lien, the Association may institute an action at law against the Owner or Owners personally obligated to pay the Assessment and/or for the foreclosure of the aforesaid lien. In any foreclosure proceeding the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. In the event an action at law is instituted against the Owner or Owners personally obligated to pay the Assessment there shall be added to the amount of any such Assessment:

- (i) The interest provided in this Section,
- (ii) The costs of preparing and filing the complaint
- (iii) The reasonable attorneys' fees incurred in connection with such action, and
- (iv) Any other costs of collection;

and in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided in this Section and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents or trustees the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also suspend the Association membership and voting rights of any Owner who is in default in payment of any Assessment in accordance with this Declaration and/or the Bylaws.

(d) Notice to Mortgagees. The Association may, and upon the written request of any mortgagee holding a prior lien on any part of the Properties, shall report to said mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the delinquency date of such Assessment.

**5.10 Subordination of the Lien to Mortgages.** The lien securing the payment of the Assessments shall be subordinate and inferior to the lien of any bona fide first lien mortgage or deed of trust note or hereafter recorded against any Lot; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale, whether public or private, of such property pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve the new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent assessment.

### 5.11 Exempt Property.

The following property subject to this Declaration shall be exempted from the assessments, charges and liens created in Section 5.04 and Section 5.05(a) hereof:

(a) All properties dedicated and accepted by the local public authority and devoted to public use.

(b) All Common Properties.

**5.12 Estoppel Information from Board with Respect to Assessments.** The Board shall upon demand at any time furnish to any Owner liable for an Assessment, a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge maybe made by the Board of Directors of the Association for the issuance of such certificates.

## ARTICLE VI GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

**6.01 Powers and Duties.** The affairs of the Association shall be conducted by its Board of Directors. Prior to the incorporation of the Association, the Declarant shall select and appoint the Board of Directors, each of whom shall be a Class A or Class B Member, or an officer, employee, representative or agent of a Class A or Class B Member. From and after the effective date of the Association's incorporation, the Board of Directors shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Properties, the Common Properties and the Owners, shall provide and pay for, out of the fund(s) collected by the Association pursuant to Article V above, the following:

- (a) Care and preservation of the Common Properties and the furnishing and upkeep of any desired personal property for use in the Common Properties. Expenditures for the repair or installation of capital improvements, not included in the annual maintenance budget, may be paid from the reserve fund as specifically provided in Section 6.05 herein.
- (b) Care and maintenance of the private streets, landscaping, screening walls entry features, cabana, swimming pool, volleyball & basketball courts, which may be constructed by Declarant on the Common Properties. Maintenance includes all repairs, rebuilding or cleaning deemed necessary by the Board of Directors.
- (c) Maintenance, should the Board so elect, of exterior grounds, drives, parkways, including care of trees, shrubs and grass, the exact scope of which shall be further specified by the Board from time to time. In particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the maintenance of landscaping, swimming pool, trees, shrubs, grass and like improvements which are located on Lots, except for landscaping and other like improvements which are located within rear yards or side yards enclosed by solid fence, which shall be maintained by the individual Lot Owner. Maintenance services contracted for by the Board in accordance with this paragraph shall be paid for out of Association funds.
- (d) The services of a person or firm to manage and/or provide consultation to the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.
- (e) Legal and accounting services.
- (f) A policy or policies of insurance ensuring the Association, its officers and directors against any liability to the public or to the Owners (and/or their invitees or tenants) incident to the operation of the Association, including, without limitation, officers' and directors' liability insurance.
- (g) Workers' compensation insurance to the extent necessary to comply with any applicable laws.
- (h) Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.

- (i) Any other materials, supplies, insurance or property owned by the Association, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments Which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.
- (j) To execute all declarations of ownership for tax assessment purposes and to pay all taxes With regard to the Common Properties.
- (k) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on one or more Lots With respect to: (i) taxes on the Common Properties and (ii) insurance coverage of the Common Properties, as they relate to the assessment, collection and disbursement process envisioned in this Declaration.
- (l) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.
- (m) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association and the Common Properties, expressly including the power to enter into management and maintenance contracts.
- (n) If, as, and when the Board, in its sole discretion, deems necessary it may take action to protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements.
- (o) To make reasonable rules and regulations for the operation and use of the Common Properties and to amend them from time to time, provided that any rule or regulation may be amended or repealed in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Properties, by a majority of the Members in the portions affected.
- (p) Subsequent to incorporation, to make available to each Owner, within one hundred twenty (120) days after the end of each year, an unaudited annual report.
- (q) Pursuant to Article VII herein, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.
- (r) If, as and when the Board, in its sole discretion, deems necessary, it may take action to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions or rules.
- 6.02 Board Powers.** From and after the date on which the title to the Common Properties has been conveyed to the Association, The Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.
- 6.03 Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.
- 6.04 Liability Limitations.** No Member, officer of the Association or member of the Board of Directors of the Association shall be personally liable for debts contracted for, or otherwise incurred by the Association, or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its directors, officers, agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same.



**6.05 Reserve Funds.** The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the subdivision, and maintaining the subdivision and improvements herein, all as may be more specifically authorized from time to time by the Board of Directors.

**ARTICLE VII  
MAINTENANCE; REPAIR AND RESTORATION**

**7.01 Right to Purchase Insurance.** The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, the improvements thereon and appurtenant thereto, for the interest of the Association and of all Members thereof, in such amounts and With such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use to the subject property. Such insurance may include, but need not be limited to:

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.
- (b) Public liability and property damage insurance on a broad form
- (c) The Association in accordance with its Bylaws shall determine fidelity bond for all directors, officers and employees of the Association having control over the receipt or the disbursement of funds in such penal sums as.
- (d) Officers and directors liability insurance.

**7.02 Insurance Proceeds.** The Insurance carrier to the Association shall disburse proceeds of insurance or contractors designated by the Association as the Board of Directors may direct. The Association shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. The Association as part of a general reserve fund for repair and replacement of the Common Properties, as required in this Article, remaining after satisfactory completion of repair and replacement, shall retain any balance from the proceeds of insurance paid to the Association.

**7.03 Insufficient Proceeds.** If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in Article V of this Declaration to cover the deficiency. If the insurance proceeds are insufficient to repair or replace any loss or damage for which an Owner is bound hereunder, such Owner shall, as such Owner's undivided responsibility, pay any excess costs of repair or replacement.

**7.04 Mortgagee Protection.** There may be attached to all policies of insurance against loss or damage by fire and other hazards, a mortgagee's or lender's loss payable clause; provided, however, that amounts payable under such clause to the mortgagee may be paid to the Association to hold for the payment of costs of repair or replacement, subject to the provisions of Section 7.02 hereof. The Association shall be responsible to hold said monies or to collect additional monies if the proceeds are insufficient to pay for the cost of all repairs or replacements and shall ensure that all mechanics', materialmen's and similar liens which may result from said repairs or replacements are satisfied.

**7.05 Destruction of Improvements on Individual Lots.** In the event of destruction (total or partial) to the improvements on any individual Lot due to fire or any other cause, each Owner covenants and agrees to clear and remove any and all debris resulting from such damage within two (2) months after the date that the damage occurs and to complete all necessary repairs or reconstruction of the damaged improvements within one (1) year after the date that the damage occurs.



**ARTICLE VIII  
USE OF COMMON PROPERTIES**

The Common Properties may be occupied and used as follows:

**8.01 Restricted Actions by Owners.** No Owner shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increase of any insurance carried by the Association. No dumping of waste shall be committed in or on the Common Properties.

**8.02 Damage to the Common Properties.** Each Owner shall be liable to the Association for any damage to the Common Properties caused by the negligence or willful misconduct of the Owner or such Owner's family, guests, pets, tenants or invitees.

**8.03 Rules of the Board.** All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees, incurred by the Association in connection therewith.

**ARTICLE IX**

**USE OF PROPERTIES AND LOTS; PROTECTIVE COVENANTS**

The Properties and each Lot situated thereon shall be constructed, developed, reconstructed, repaired, occupied and used as follows:

**9.01 Public Use Permitted.** Any restrictions contained herein shall not be intended to restrict or prohibit, and shall not restrict or prohibit the State of Texas or any political subdivision thereof, including independent school districts, from using any of the property affected hereby for public purposes, regardless of the nature of said use.

**9.02 Residential Purposes.** Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. No Owner or other occupant shall use or occupy such Owner's Lot, or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single family detached residence for the Owner or such Owner's tenant and their families and domestic servants employed on the premises. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of any Lot for a duplex, duplex apartment, garage apartment, or other apartment use, commercial or professional uses (except as expressly provided in Section 9.22 hereof).

**9.03 Minimum Lot Area.** No Lot shall be re-subdivided; provided, however, that Declarant shall have and reserves the right, at any time, or from time to time, upon the joinder and 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 re-subdivision or re-configuration of any Lots then turned by Declarant, so long as, such replat results in each re-subdivided Lot containing not less than the minimum lot size prescribed by the zoning ordinances of the City of Boyd, Texas. Owners shall not unreasonably withhold or delay their joinder in or consent to the repeat or amendments to the Plat. The privilege to re-plat lots owned by the Declarant reserved in this Section 9.03 should be exercisable only by Declarant.

**9.04 Minimum Floor Space.** All floor areas referenced below are for air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the main dwelling. The main living area of each residential structure shall conform to the following minimum living area:

Lots 2 thru 16	Block B }	minimum 2,800 square feet with a
Lots 1 thru 8	Block C }	minimum of 2,300 square feet on
Lots 1 thru 7	Block D }	first floor
Lots 1 thru 8	Block A }	
Lots 1 thru 4	Block E }	minimum 3,500 square feet with a
Lots 1 thru 4	Block F }	minimum 2,800 square feet on first
Lots 1 thru 5	Block G }	floor
Lots 1 thru 2	Block H }	
Lots 1 thru 9	Block I }	
Lots 1 thru 6	Block J }	

**9.05 Combining Lots.** Any person owning one or more adjoining Lots may consolidate such Lots into a single building location for the purpose of constructing one (1) residential structure thereon (the plans and specifications therefor being approved as set forth in this Declaration) and such other improvements as are permitted herein; provided, however, any such consolidation must comply with the rules, ordinances and regulations of any governmental authority having jurisdiction over the Properties. In the extent of any such consolidation, the consolidated Lots shall be deemed to be a single Lot for purposes of applying the provisions of this Declaration; provided, however, such Owner shall continue to pay assessments on such Lots as if such Lots had not been consolidated and shall be entitled to one vote for each Lot (determined prior to such consolidation) owned by such Owner. Any such consolidation shall give consideration to easements as shown and provided for on the Plat and any required abandonment or relocation of any such easements shall require the prior written approval of Declarant as well as the prior written approval of any utility company having the right to the use of such easements. Combining of portions of Lots into a single building site is prohibited.

**9.06 Building Setback Requirements .** All front, side and rear setbacks must be approved by the Architectural Control Committee, and must meet the requirements of the City of Boyd and the requirements of the Plat; provided, however, no structure of any kind (either dwelling or accessory structures) shall be nearer than ten feet (10') to any side property line of any Lot. The location of the main residence on each Lot and the facing of the main elevation with respect to the street shall be subject to the written approval of the Architectural Control Committee. No building or structure of any type shall be erected on any Lot nearer to the property lines indicated by the minimum building setback line on the Plat. Front setback lines are thirty (30) feet. Rear setback line is fifteen (15) feet.

**9.07 Height.** No building or structure on any Lot shall contain more than two (2) stories or exceed, in height, the maximum height allowed by the City of Boyd, such height to be measured and determined in accordance with the method approved by the City of Boyd.

**9.08 Driveways.** Each Lot must be accessible to the adjoining street by a driveway suitable for such purposes and approved in writing as to design, materials and location by the Architectural Control Committee before the residential structure located on such Lot may be occupied or used.

**9.09 Access.** No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot except as expressly provided on the Plat, or otherwise approved in writing by the Architectural Control Committee.

**9.10 Drainage.** Neither the Declarant nor its successors or assigns shall be liable for any loss of, use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, walks, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters. After the residence to be constructed on a lot has been substantially completed, the Lot will be graded so that surface will flow to streets, alleys, drainage easements, or Common Properties, and in conformity with the general drainage plans for the subdivision. No dams shall be constructed nor any other alteration or change be made in the course or flow of any waterway or drainage course crossing or abutting any Lot, without the prior written consent of the Architectural Control Committee. All drainage and grading, including existing and proposed grades must be indicated on the site plan and should be designed to contain drainage within lot boundaries or designated drainage easements. The proper drainage of the lot is the responsibility of the Builder.

**9.11 Erosion Control.** During the construction of improvements on the Lots and prior to the landscaping of such Lots, Lot Owner will take responsibility to prevent excessive erosion of Lots, causing silt to be deposited in streets and in the storm drains. Builder shall maintain silt fences until landscaping has been complete.

**9.12 Utilities.** Each residence situated on a Lot shall be connected to the water and sewer lines as soon as practicable after same is available at the Lot line.

The installation and use of any propane, butane, LP Gas or other gas taken, bottle or cylinder of any type (except portable gas grills) shall require the prior written approval of the Architectural Control Committee

### 9.13 Construction Requirements.

(a) **Portable Toilets.** A portable toilet for each house will be required during building construction.

(b) **Masonry Requirements.** The Architectural Control Committee shall have the right to approve the exterior surface of all residential dwellings of glass, brick, brick veneer, stone, stone veneer, stucco, or other materials. It is specifically required that the exterior wall area of each residence located with the Properties shall not have less than 90 percent (90%) brick, brick veneer, stone, stone veneer, or stucco construction. All chimney or fireplace enclosures shall be one hundred percent (100%) brick veneer, stone, or stone veneer construction or stucco. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, brick veneer, stone, or stone veneer wall area of a residence. No previously used materials shall be permitted on the exterior of the residential structures located within the Properties, without the prior written approval of the Architectural Control Committee.

(c) **Framing & Roofing Requirements.** The buildings constructed on the Lots must have a two ply composition roof and color must be weathered wood, or antique slate or a light gray with a thickness/weight of approximately 280# per square. The Architectural Control Committee must approve any other color. The Architectural Control Committee will only approve roofing materials which are of the highest grade and quality and which are consistent with the external design, color and appearance of other improvements within the subdivision. The primary roof pitch of any structure shall be a minimum of 10x12 steep. The predominant first floor plate line shall be ten (10) feet on all Lots in Blocks A, F, G, H, I, and J. All Lots in Blocks B, C, and D shall have a primary first floor plate line of nine (9) feet. The Architectural Control Committee must approve any deviation of roof pitch in writing. Exterior paint and stain colors shall be subject to the written approval of the Architectural Control Committee.

(d) **Sidewalks and Driveway Approaches.** Sidewalks are required in the front and side yards (if applicable) of any new single family dwelling. The sidewalks and driveway approaches shall conform to International Building Code Standards and be four (4) feet wide, four (4) inches thick and be built with 3/8 inch re-bars. The sidewalks shall be located 4 1/2 feet from the back of the curb. The streets in Highland Oaks will have "laydown" curbs. No cuts shall be made into the "laydown curbs" The driveways shall be twelve (12) feet wide with the driveway approach having a five (5) radius or flare on each side of driveway entrance.

(e) **Electric Service Riser.** Each residential structure shall have installed on the outside wall thereof a service riser conduit, the location and length of such conduit to be subject to the written approval of the Architectural Control Committee; provided, however, no such conduit shall be visible from public streets, Common Properties or adjoining Lots.

(f) **Above ground pools.** No above ground level swimming pools shall be installed on any Lot.

(g) **Completion.** All exterior construction of the primary residential structure, garage, porches, and any other appurtenances or appendages of every kind and character on any Lot and all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work, all interior walls, ceilings, and doors shall be completed and covered by paint, wallpaper, paneling or the like, and all floors covered by wood, carpet, tile or other similar floor covering) shall be completed not later than one (1) year following the commencement of construction. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set.

(h) **Retaining walls.** Retaining walls must be constructed entirely out of materials approved by the Architectural Control Committee. Railroad or wooden ties are not acceptable for retaining walls. Retaining walls shall be limited to 4' 0" in height. Where grade changes are greater than 4' 0", a series of walls in terraces may be required. All retaining walls located in front yard areas or visible from the street shall be faced in brick or stone to match the residence and complement the materials of the home. If a Builder builds a retaining wall adjacent to another lot owner's fence and places a fence on top of the retaining wall, that retaining wall shall be double faced so that the adjacent lot owner can remove his fence and view a finished rock retaining wall with neighbor's fence above it.

(i) **Telecommunications.** All lots within Highland Oaks will have access to a conduit in the rear of the lot that will be available to connect directly to the Highland Oaks duct bank system, which will be owned and operated by the Declarant or an affiliated party. Homes within Highland Oaks shall be designed and constructed to provide a form of structured wiring in order to take advantage of the technology provided to each lot.

Each home structured wiring shall include but not be limited to the following:

1. **Telephone** - Unshielded Cat5e - Home run to structured can from master bedroom, master bath, bedrooms, family room, game room, study, and kitchen
2. **Internet** - Unshielded Cat5e - Home run to structured can from master bedroom, bedrooms, family room, study, and kitchen
3. **Video** - Quad shield RG6 Home run to structured can from master bedroom, bedrooms, family room, game room, study, and kitchen
4. **Speaker wiring**- to power and control two (2) speakers that will consist of 4X16 gauge speaker wire plus one (1) Cat5e run to a single gang box from the distributed audio location, then two (2) 2X16 gauge speaker wire to speaker locations in master bedroom, master bath, bedrooms, family room, game room, study, kitchen, formal dining room, formal and living room.
5. **Connectors and Optional Mounting Plates**- in master bedroom, master bath, bedrooms, family room, game room, study, kitchen, formal dining room, formal, and living room.

#### **Media Room**

- One room shall be designated as the "media room" and will be wired with 16 gauge speaker wire to accommodate a 5.1 surround sound speaker system. Power and high resolution wire for a projector or wall mount television shall be run from the designated media equipment location to the mounting site for the television.

#### **Patio**

- (1) Pool Stub Out. Location for expansion to pool side speakers (16/4) and (1) Cat5e from patio volume control to stub out.
- Connectors and Optional Mounting Plates.

#### **Front Door**

- (1) Video Camera - one Cat5e & one RG6.
- Connectors and Optional Mounting Plates.

#### **Touch-screen**

- (1) Location determined by Lot Owner - one Cat5e & one 22X4 to structured can.

#### **HVAC Communicating Thermostat**

- (2) Multi-Zone Locations - Each thermostat to structured can - one Cat5e.

#### **Service Runs**

- (2) Telephone - Unshielded Cat5e from outside service to structured can.
- (3) TV/Video Quad Shield RG6 from outside service to structured can.
- (3) Satellite/Video Quad Shield RG6 from outside south facing back of house so can't be seen from road - service to structured can.

The architectural control committee shall have the authority to set and amend these requirements for the structured wiring system.

**9.14 Building Permits.** The Building Inspector of the City of Boyd or other municipal authority, is hereby authorized and empowered to revoke, as the case may be, any and all permits for construction of improvements of any kind or character to be erected on any Lot, if such improvements do not conform to and comply with these Covenants and Restrictions.

**9.15 Garages and Servants Quarters.** Each residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles and an additional half-space for storage. All garage doors shall be closed at all times when not in use. Detached garages, carports, servant's quarters, and storage rooms must be approved in writing by the Architectural Control Committee. J entry garages are allowed provided the garage door facing the street has wood applied decorative panels. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. No garage except a J entry shall face a residential street or any of the Common Properties unless

approved in writing by the Architectural Control Committee. Whenever possible, an auto court shall be formed with screen walls and/or landscaping around these spaces to reduce garage door impact. Detached or front entry garages may be considered if a lot precludes side entry arrangements (i.e. pie shaped lots) or where lot frontage is restrictive. In such cases, front entry garages must be placed in the rear fifty percent (50%) of the lot. Side entry garages located near the front of the house shall have landscape screening the garage from view of the street. Any stained concrete to the front of the house or driveway shall require the approval of the Architectural Control Committee. All sidewalks within the right of way shall be standard base concrete color.

**9.16 Landscaping and Sprinkler System.** Within thirty days of house completion, the front and side yards of all houses shall be sodded or otherwise planted by the Owner thereof with grass or other ground cover or plantings and maintained in a clean and attractive manner free of dust and weeds. All areas visible from the street fronting a house shall be attractively landscaped and equipped with a properly working water irrigation system. A minimum of two trees with 3-inch caliper will be required in front of all lots if no trees currently exist. Two additional trees are required on a corner lot. All air conditioning compressors shall be screened from public view.

**9.17 Fences.** No fence, wall or hedge shall be erected, placed or altered on any lot without the prior written approval of the Architectural Control Committee and the design of and materials used in the construction of fences shall be subject to the prior written approval of the Architectural Control Committee. No fence, wall or hedge shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line indicated on the Plat, unless otherwise permitted by the Architectural Control Committee and in accordance with the requirements of the City of Boyd. Chain link fences are permissible for dog runs provided they are contained within the property and hidden from neighboring views and streets. Otherwise, no wire or woven fence shall be permitted on any part of a lot. All service and sanitation facilities, clothes lines, trampolines, swing sets, wood piles, tool sheds and air conditioning equipment must be enclosed within fences, walls and/or landscaping so as not to be visible from the adjoining lots and residential streets. If they cannot be screened, the request must be submitted to the architectural control committee showing the location of the lot with the type and colors of the building materials. Upon submission of a written request, the Architectural Control Committee may, from time to time, at its sole discretion, permit Owners to construct fences or walls which are in variance with the provisions of this paragraph where, in the opinion of the Architectural Control Committee, the fence or wall is an integral part of the home. Fencing shall be constructed in accordance with the following restrictions based on the location of such fencing:

**(a) Front Yard Fencing.** Fencing will be allowed to extend from the perimeter of a dwelling to the side or rear property lines, provided such fence shall be ornamental iron. All fencing shall be of construction identical to the type of construction used on the residence located on such lot, is no higher than six (6) feet, and the wrought iron fence is painted black. The Architectural Control Committee may require a masonry column transition from iron to wood for the side connections.

**(b) Side and Rear Yard Fencing.** Fencing between lots shall be of wood material, provided that such wood fence is of spruce material or better, has boards which are installed vertically only (not horizontally or diagonally), is no higher than eight feet (8') and transitions back to six (6) feet in the front. All fences are required to be stained a cedar color and set with metal posts. Any color other than #015 Medium Brown color (cedar) of the fence material shall require the approval of the Architectural Control Committee. Lots 4 thru 8 Block A, Lots 2 thru 4 Block B, Lots 1 thru 4 Block F, and Lots 1 thru 7 Block I require wrought iron fences on the side that faces the open space and back 20 feet on the side property line.

**9.18 Trash Receptacles and Collection.** Each lot owner shall make or cause to be made appropriate arrangements with the City of Boyd, Texas, for collection and removal of garbage and trash on a regular basis. If the owner fails to make such provisions, the Association may do so and assess the costs thereof to the owner. Each and every owner shall observe and comply with any and all regulations or requirements promulgated by the City of Boyd, Texas, and/or the Association, in connection with the storage and removal of trash and garbage. All lots shall at all times be kept in a healthful, sanitary and attractive condition. No lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly fitting lids, or other containers approved by the City of Boyd, Texas, and which shall be maintained in a clean and sanitary condition.

No lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected 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 without unreasonable delay, until completion of the improvements, after which the materials shall either be removed from the lot or store in a suitable enclosure on the lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on a lot. Care should be taken when loading trucks and hauling trash to prevent spillage while in transit. A trash container enclosure will be required on each construction site. At the end of each work day, materials must be stored neatly, and all trash placed in the trash enclosure.

**9.19 Exterior Lighting.** No exterior light, including landscape lightning shall be installed or maintained on any lot that shines directly into an adjacent home. The determination of whether and exterior lighting is objectionable shall be determined by the Architectural Control committee. Upon being given notice by the Architectural Control Committee that any exterior light is objectionable, the Owner of the lot on which same is located will immediately remove said light or shield the same in such a way that it is no longer objectionable.

**9.20 Window Coolers.** No window or wall type air conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any residential building on any part of the Properties.

**9.21 Antenna Restrictions.** No radio or television aerial wires or antennas shall be maintained on the outside of any building nor shall any freestanding antennas of any style be permitted. All radio or television aerial wires or antennas must be built within the main structure and must not be visible from outside of such structure. No radio signals, television signals or other form of electromagnetic radiation shall originate from any lot, which may unreasonably interfere with the reception of television or radio signals on any other lot. No satellite dish shall be larger than 18 inches in diameter and placed in the rear 50% of the house. It shall be placed on the roof and have a color that blends in with the roof shingles. The Architectural Control Committee reserves the right to specify the roof location.

**9.22 Temporary Structures and Vehicles.** No temporary structure of any kind shall be erected or placed upon any lot. No house, home trailer, mobile home, camper, boat trailer, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residence to be built thereon, shall be stored on any lot, either temporarily or permanently, and no residence, house, garage or other structure appurtenant thereto shall be moved upon any lot from another location, provided, however, that Declarant reserves the exclusive right to erect, place, maintain, and permit buildings upon the Property as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of lots, construction and selling of residences and constructing other improvements on the Properties. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office. Declarant shall also have the temporary right to use a residence situated on a lot as a temporary office during the period of and in connection with the construction and sales operations on the Properties, but in no event shall Declarant have such right for a period in excess of one (1) year after the date of substantial completion of his last residence on the Properties. Any truck, bus, boat, boat trailer, trailer, mobile home, and invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the Board of Directors.

**9.23 Signs.** No signs or flags shall be displayed to the public view on any lot, with the following exceptions: (i) Declarant may erect and maintain a sign or signs for the construction, development, operation, promotion and sale of the lots; (ii) the patriotic display of flags not exceeding 4' x 6' in size shall be permitted on customary holidays; and (iii) signs of customary dimensions (2' X 3' maximum) advertising said property or portions thereof for sale. Notwithstanding anything herein contained to the contrary, any and all signs, if allocated, shall comply with all sign standards of the City of Boyd, Texas, as such standards may be applicable to the Properties.

**9.24 Utility Services.** All services to the home including pre-wiring cable TV must be installed underground. Surface mounted mechanical must be screened from view and grouped together away from view and grouped together away from street/ public view.

**9.25 Drilling and Mining Operations.** No oil drilling, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in 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.

**9.26 Offensive Activities.** No noxious or offensive activity shall be carried on or upon the properties or any part thereof, nor shall anything be done or maintained thereon which may disturb the neighborhood or occupants of adjoining property, or detract from its value as an attractive residential community. The Board of Directors shall have the exclusive authority to determine, in its sole discretion, which may constitute a nuisance or offensive activity. Without limitation, no exterior speakers, horns, bells or other sound devices, excluding security devices, shall be used or placed on the property. Pets shall not be permitted to run at large, but shall be kept under control by Owners, or guests of the Owners, by leash, cord or chain. Each animal owner is responsible to pickup any excrement if the owner takes the animal out for a walk. Habitually barking, howling, or yelping pets shall be deemed a nuisance. The Board of Directors shall have the exclusive authority to determine, in its sole and absolute discretion, if a particular animal, bird, or pet is creating a nuisance.

**9.27 Duty of Maintenance**

- (a) Owners and occupants (including lessees) of any Lot shall, jointly and severally, have the duty and responsibility, at their sole cost and expense, to keep the Lot so owned or occupied, including buildings, improvements, grounds or drainage easements or other rights-of-way incident thereto, and vacant land, in a well maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:
- (i) Prompt removal of all litter, trash, refuses and waste;
  - (ii) Lawn mowing on a regular basis;
  - (iii) Tree and shrub pruning;
  - (iv) Watering landscaped areas;
  - (v) Keeping exterior lighting and maintenance facilities in working order;
  - (vi) Keeping lawn and garden areas alive, free of weeds, and attractive;
  - (vii) Keeping parking areas, driveways, curbs and roads in good repair;
  - (viii) Complying with all government health and police requirements;
  - (ix) Repair of exterior damages to improvements;
  - (x) Cleaning of landscaped areas lying between street curbs and Lot lines, unless such streets or landscaped areas are expressly designated to be Common Properties maintained by applicable governmental authorities or the Association; and
  - (xi) Repainting of improvements.
- (b) If, in the opinion of the Association, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the repairs and maintenance or make arrangements with the Association for making the repairs and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such repair and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person.
- (c) Notwithstanding the provisions of Section 9.27(b) above, if, at any time, an Owner shall fail to control weeds, grass and/or other unsightly growth, the Association shall have the authority and right to go onto the Lot of such Owner for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a sum up to two (2) times the actual cost to the Association for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. If, at any time, weeds or other unsightly growth on the Lot exceed six inches (6") in height, the Association shall have the right and authority to mow and clean the Lot, as aforesaid.
- (d) The Owners and occupants (including lessees) of any Lot on which work is performed pursuant to Sections 9.28(b) and (c) above shall, jointly and severally, be liable for the cost of such work [such costs constituting a special individual assessment as specified in Section 5.05(b) hereof] and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all said persons, jointly and severally, and shall constitute a lien against that portion of the Properties on which said



work was performed. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in this Declaration, and the Association shall have the identical powers and rights in all respects, including but not limited to the right of foreclosure.

**9.28 Maintenance of Common Properties.** The Common Properties (including landscaping comprising portions of the Common Properties) are described, in part, in Article Ig. All landscaping and improvements placed or erected on the Properties by Declarant shall be owned and maintained by the Association.

**9.29 Animals** No birds, animals, livestock, or poultry of any kind shall be raised, bred or kept on any part of the Properties, except that not more than two (2) dogs, two(2) cats, or other household pets in the aggregate may be kept on any Lot, and then only if they are kept, bred or raised solely as domestic pets and not for commercial purposes. Such pets must be kept within the rear, private fenced yard of the Owner or in the house. No horses or barnyard animals shall be kept on the property. Pets shall not be permitted to run at large, but shall be kept under control of Owner's or guests of the Owners, by leash, cord or chain..

**9.30 Natural Gas Service.** Highland Oaks has been piped for natural gas by Atmos Gas Company on a condition and promise by the Developer that each residence in the Addition will be equipped with natural gas appliances capable of utilizing under normal operating conditions a minimum of 125 MCF per year.

**9.31 Storage Sheds** No outbuilding, shop, trailer, or residence of a temporary character shall be permitted on the lot (except as otherwise reserved as right by the Declarant).

**9.32 Gazebos, Permanent Accessory Buildings and Swimming Pools** All backyard improvements on the lot other than the house shall require the approval of the architectural control committee. A site plan and conceptual drawings need to be submitted for approval. Construction materials need to be compatible with the main house structure. All the conditions for architectural control committee approval will be the same outlined in Article 10.02 of these restrictive covenants.

**9.33 Mailboxes.** All mailboxes shall be placed in the center of the lot and be built of masonry materials identical to those of the house. The mailbox box shall be no more than twenty-four (24) inches wide and sixty (60) inches tall and be in conformance with the Architectural Control Committee standard.

#### **ARTICLE X ARCHITECTURAL CONTROL COMMITTEE**

**10.01 Architectural Control Committee.** Until at least ninety percent (90%) of the Lots have completed residences constructed thereon and shall be occupied by the Owners thereof, the Architectural Controls Committee, hereinafter called the "Committee", shall be composed of three (3) or more individuals selected and appointed by the Declarant. At such time as at least ninety percent (90%) of the Lots have completed residences constructed thereon and shall be occupied by the Owners thereof, the Committee shall be composed of such individuals selected by a vote of the Members taken in accordance with Section 3.03 hereof. The Committee shall use its best efforts to promote and ensure a high level of quality, harmony and conformity throughout the Properties. The Committee shall function as the representative of the Owners for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first class residential development. A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate and appoint a successor.

No member of the Committee, nor their designated representative, shall be entitled to any compensation for services performed hereunder nor be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed, actions taken or in-actions in connection with any undertaking, responsibility, or activity hereunder or request for action hereunder. At any time, the Declarant may delegate and assign to the Board of Directors, all of the Declarant's power, and right to change the membership of the Committee, to withdraw or add powers and duties from or to the Committee, or to restore the powers and duties of the Committee. Such action by the Declarant shall be effective upon recordation of a written instrument properly reflecting same in the Office of the County Clerk of Wise County, Texas.



**10.02 Architectural Approval.** No building, structure, fence, wall or improvement of any kind or nature shall be erected, constructed, placed, altered, changed or modified on any lot until the plot plan showing the location of such building, structure, paving or improvement, construction plans and specifications thereof and landscaping and grading plans therefor have been submitted to and approved in writing by the Committee as to: (i) location with respect to lot lines; topography; finished grades elevation; effect of location and use on neighboring lots and improvements situated thereon; and any drainage arrangement, (ii) conformity and harmony of external design, color, texture, type and appearance of exterior surfaces and landscaping with existing structures and existing landscaping, (iii) quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets; and (iv) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth in bulletins promulgated by the Committee. The Committee is authorized to request the submission of samples of proposed construction materials or colors of proposed exterior surfaces.

Final plans and specification shall be submitted in duplicate to the Committee for approval or disapproval. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by The Committee and the other complete set of plans will be marked "Approved" and returned to the Owner. If found not to be in compliance with these covenants and Restrictions, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with these Covenants and Restrictions. Any modification or change to the approved set of plans and specifications which materially affects items (i) through (iv) of She preceding paragraph must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval as required herein shall be in writing. If the committee or its designated representative fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted, then Committee approval shall be presumed; provided, however, that nothing in this paragraph shall affect in any way the method for seeking or granting variances, as described in Section 10.03 hereof, nor shall any failure of the Committee to act on a variance request within any particular period of time constitute the granting or approval of any such variance request.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction, construction of other improvements and location, quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Properties. As an example, and not by way of limitation, the Committee may impose limits upon the location of window areas one residential dwelling which would overlook the enclosed patio area of an adjacent residential dwelling. Also, the Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Committee. The committee may, from time to time, publish and promulgate architectural standard bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. Such bulletins shall supplement these Covenants and Restrictions and are incorporated herein by reference. The Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of these Covenants and Restrictions.

**10.03 Variances.** Upon submission of a written request for same, the Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install improvements which are in variance from the architectural standards, the Covenants and Restrictions, or the previously published architectural bulletins which are provided in this Declaration or which may be promulgated in the future. In any case, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community; provided, however, in no event shall any such variance reduce required floor area by more than ten percent (10%). No member of the Committee shall be liable to any Owner or other person claiming by, through, or on behalf of any Owner, for any claims, causes of action, or damages arising out of the granting or denial of, or other action or failure to act upon, any variance requested by an Owner or any person acting for or on behalf of any Owner. Each request for a variance submitted hereunder shall be revised separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce the Covenants and Restrictions, architectural standards or published architectural bulletins provided hereunder against any other Owner. Each such written request must identify and set forth in detail the specific restriction or standard from which a variance is sought and describes in complete detail the exact nature of the variance sought. Any grant of a variance by the Committee must be in writing and must identify in narrative

detail both the standards from which a variance is being sought and the specific variance being granted.

**10.04 Nonconforming and Unapproved Improvements.** The Association may require any Owner to restore such Owner's improvements to the condition existing prior to the construction thereof (including without limitation, the demolition and removal of any unapproved improvement) if such improvements were commenced or constructed in violation of this Declaration. In addition, the Association may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such improvements were commenced or constructed

**10.05 No Liability.** Neither Declarant, the Association, the Committee, the Board, nor the officers, directors, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the committee, the Board, or the officers, directors, members, employees or agents of any of them. to recover any such damages and hereby releases and quit claims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or non-feasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is giving. Plans and specifications are not approved for engineering or structural design or adequacy of materials, and by approving such plans and specifications neither the Committee, the members of the Committee, the Declarant nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications.

#### ARTICLE XI EASEMENTS

**11.01 Ingress and Egress by the Association.** The Association shall, at all times, have full rights of ingress and egress over and upon each Lot for the maintenance and repair of each Lot and the Common Properties in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made at with as little inconvenience to the Owner as practical, and any damage caused by the Association's entry, other than damages caused by the Owner, shall be repaired by the Association at the expense of the Association.

**11.02 General.** The rights and duties of the Owners with respect to sanitary sewer, water, electricity, natural gas, telephone and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever (i) sanitary sewer or water service connections, (ii) natural gas, electricity, telephone or cable television lines, or (iii) drainage facilities are installed within the Properties, which connections, lines or facilities or any portion thereof lie in or upon Lots owned by any party other than the Owner of a Lot served by said connections, lines or facilities, such Owners of Lots served shall have the right and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots within or upon which said connections, lines or facilities or any portion thereof lie to repair, replace and generally maintain said connections, lines or facilities as and when the same may be necessary.

(b) Wherever (i) sanitary sewer or water service connections, (ii) natural gas, electricity, telephone or cable television lines, or (iii) drainage facilities are installed within the Properties, which connections, lines or facilities serve more than one Lot, the Owner of each Lot served by said connections, lines or facilities shall be entitled to the full use and enjoyment of such portions of said connections, lines or facilities which service such Owner's Lot.

**11.03 Reservation of Easements.** Easements over the Lots and Common Properties for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities are hereby reserved by the Association, together with the right to grant and transfer same.

**11.04 Surface Areas of Utility Easements.** Easements for installation and maintenance of utilities are reserved as shown and provided for on the plat. Underground electric, storm sewer, sanitary sewer, water, natural gas and telephone service shall be available to all Lots in the subdivision. Easements for the underground service may be crossed by driveways, walkways, patios, brick walls and fences, provided the Declarant or builder makes prior arrangements with the utility companies furnishing electric, storm sewer, sanitary sewer, water, natural gas and telephone service and provides and installs any necessary conduit of approved type and size under such driveways, walkways, patios, brick walls or fences prior to construction thereof. Such easements for the underground service shall be kept clear of all other improvements, and neither the grantee nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees, flowers or other improvements (other than for damages caused in crossing driveways, walkways, patios, brick walls or fences, providing conduit has been installed as outlined above) of the Owner located on the Lot covered by said easements. In addition, the utility easements shall not be used in alleyways.

**11.05 Emergency and Service Vehicles.** An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles and other service vehicles to enter upon the Common Properties, including but not limited to private streets, in the performance of their duties; and further, an easement is hereby granted to the Association, its officers, directors, agents, employees and management personnel to enter the Common Properties to render any service.

**11.06 Universal Easement.** The Owner of each Lot (including Declarant so long as Declarant is the Owner of any Lot) is hereby granted an easement not to exceed one (1) foot in width over all adjoining Lots and Common Properties for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachment, settling or shifting provided, however, that in no extent shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to willful misconduct of said Owner or Owners.

## ARTICLE XII GENERAL PROVISIONS

**12.01 Duration.** The Covenants and Restrictions of this Declaration shall run at with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or any Owner, their respective legal representatives, heirs, successors and assigns, or a term of thirty five (35) years from the date that this Declaration is recorded in the Office of the County Clerk of Wise County, Texas, after which time these Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Members entitled to cast seventy five percent (75%) of the votes of the Association, in the aggregate, regardless of class, has been recorded in the Office of the County Clerk of Wise County, Texas, agreeing to abolish or terminate these Covenants and Restrictions; provided, however, that no such agreements to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

**12.02 Amendments.** Notwithstanding the terms and provisions of Section 2.01 hereof, this Declaration may be amended, modified and/or changed as follows:

(a) During the time Declarant is a Class B Member as provided in Section 3.02 above, the Declarant may amend or change this Declaration with the consent of at least fifty one percent (51 %) of a quorum of the outstanding votes of all Members of the Association, regardless of class;

(b) In all other situations, this Declaration may be amended or changed upon the express written consent of at least seventy percent (70%) of a quorum of the outstanding votes of all Members of the Association, regardless of class, and the Declarant (if Declarant then owns any Lots within the subdivision).

Any and all amendments to this Declaration, shall be recorded in the Office of the County Clerk of Wise County, Texas. Notwithstanding the prior provisions of this Section 12.02, the Declarant may execute and record amendments to this Declaration without such consent or approval if the amendment is for the purpose of correcting technical or typographical errors or for clarification only.

**12.03 Enforcement.** Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, or to recover damages, or to enforce any lien created by these Covenants and Restrictions; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**12.04 Headings.** The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

**12.05 Notices to Member/Owner.** Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

**12.06 Notices to Mortgagees.** If a holder of a mortgage on a Lot shall notify the Association of its address and the identity of the Lot and Owner covered by and granting such mortgage, then such holder(s) shall be entitled to receive written notification from the Association of any default by the respective Owner in the performance of such Owner's obligations as established by this Declaration.

**12.07 Disputes.** The Board of Directors, whose determination shall be final and binding upon all Owners, shall determine matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or by by-laws of the Association.

**12.08 Termination of and Responsibility of Declarant.** If Declarant shall convey all of its right, title and interest in and to the Properties and assign all its rights, benefits and obligations as Declarant hereunder to any partnership, individual or individuals, corporation or corporations, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed as Of the 15 day of March 2007.

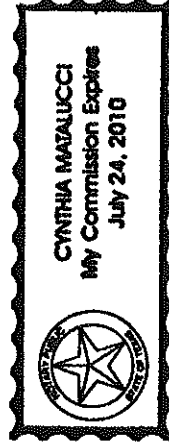
Boyd Highland Oaks, L.P., a Texas Limited Partnership

By: Larry R. Cole, a Texas Limited Liability Company, General Partner

By: Larry R. Cole  
Larry R. Cole, President

ACKNOWLEDGEMENT

This instrument was acknowledged before me on the 15 day of March, 2007 as signed by Larry R. Cole, President of Boyd Highland Oaks GP, LLC, a Texas corporation, the General Partner of Parkview Estates, L.P., a Texas limited partnership.



Cynthia Matalucci  
NOTARY PUBLIC, STATE OF TEXAS

CYNTHIA MATALUCCI  
Type or Print Name

After Recording Return to:

Larry Cole  
200 Pate Orr Road South  
Keller, Texas 76248