

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BARKER LAKE**

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BARKER LAKE**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS DECLARATION is made on the date hereinafter set forth by TBJ Properties, Inc., a Texas corporation.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Harris County, Texas known as Barker Lake, Section One, a subdivision containing 160 lots out of the William Francis Survey, Abstract 260, according to the map or plat thereof, filed on February 15, 2002 under Clerk's Film Code No. 505009 of the Real Property Records of Harris County, Texas; and

WHEREAS, Declarant desires to develop the Property as a residential subdivision, together with any other land which Declarant at its sole discretion may hereinafter add thereto; and

WHEREAS, Declarant desires to provide and adopt a uniform plan of development including assessments, conditions, covenants, easements, reservations, and restrictions designed to govern, control and preserve the values and amenities of the Property for the development, improvement, sale, use and enjoyment of the Property as a residential subdivision; and

WHEREAS, Declarant desires to subject the Property, together with additional land as may hereinafter be made subject hereto, to the assessments, conditions, covenants, easements, reservations, and restrictions hereinafter set forth, for the benefit of the Property, additions thereto, and each Owner of any part thereof; and

WHEREAS, Declarant has deemed it desirable for the enforcement of the Declaration and the efficient preservation of the amenities in said subdivision, to create an Association (hereinafter defined) to which shall be delegated and assigned the power of administering and enforcing these assessments, conditions, covenants, easements, reservations and restrictions, including levying, collecting and disbursing the assessments; and

WHEREAS, there has been or will be incorporated the Barker Lake Homeowners Association, Inc., a non-profit corporation created under the laws of the State of Texas, whose directors have established By-Laws by which said Association shall be governed through its Board of Directors, for the purpose of exercising the functions aforesaid.

NOW THEREFORE, Declarant hereby declares that the Property shall be developed, improved, sold, used and enjoyed in accordance with, and subject to the following plan of development, including the assessments, conditions, covenants, easements, reservations, and restrictions hereinafter set forth, all of which are hereby adopted for, and placed upon said Property and shall run with the Property and be binding on all parties, now and at anytime hereinafter, having or claiming any right, title or interest in the Property or any part thereof, their heirs executors,

administrators, successors and assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired, and shall inure to the benefit of each Owner of any part of the Property.

ARTICLE I. DEFINITIONS OF TERMS.

The following words when used herein shall have the following meanings when capitalized (unless the context requires otherwise and the term is then not capitalized):

- A. "Annual Assessment" means the assessment levied against all Lots for the purposes set out in Article XIII, Section B.
- B. "ARC" means the Barker Lake Architectural Review Committee established for the Property as set forth in Article VIII, Section A.
- C. "Association" means the BARKER LAKE HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation, its successors and assigns, which has jurisdiction over all properties located within the land encumbered under this Declaration, as set out in Exhibit "A" attached hereto, and as may be amended.
- D. "Barker Lake" and/or "Barker Lake Subdivision", means Barker Lake Subdivision, Section One located in Houston, Harris County, Texas, and is more particularly described as the land set forth in Exhibit "A" hereto, which may be amended if as, and when additional land is annexed into the subdivision by the recording of a Supplemental Declaration.
- E. "Board" means the duly elected Board of Directors of the Association as provided within the By-Laws.
- F. "Builder" means an individual or entity that purchases multiple Lots from the Declarant for the purpose of constructing Dwellings thereon, which Dwellings will be offered for sale to purchasers. "Builder" shall not include an individual or entity constructing additions onto a Dwelling already in existence, performing repairs or maintenance or re-constructing or replacing a Dwelling after demolition or destruction, either partial or complete.
- G. "Builder Guidelines" means a publication of the ARC that sets forth various standards including but not limited to exterior harmony of any and all improvements placed upon or constructed on any Lot, which publication may be amended without notice to owners.
- H. "By-Laws" means the By-Laws of the Barker Lake Homeowners Association, as they may be amended from time to time.
- I. "Common Area" means all real property owned in fee or held in easement by the Association for the common use and enjoyment of the Owners and shall include areas designated by Declarant to be conveyed by deed or easement to the Association.
- J. "Declarant" means TBJ Properties, Inc., its successors and assigns, as may be evidenced by a written instrument recorded in the Real Property Records of Harris County, Texas and any other county in which all or a portion of the Property is located.
- K. "Declaration" means this Declaration of Covenants, Conditions, and Restrictions for Barker Lake or any other Eligible Property brought under the control of this document.
- L. "Dwelling" means a structure or structures intended for single-family residential use.

- M. "Eligible Property" means all of the property eligible to become subject to this Declaration, as more particularly described on the attached Exhibit "B" which Exhibit "B" may be amended from time to time by Declarant as additional property is made eligible for annexation into Barker Lake as allowed under this Declaration.
- N. "Homesite" means one or more Lots upon which a Dwelling may be erected subject to this Declaration.
- O. "Lot" means a parcel of Property defined as one Lot by the recorded plat and/or any replat thereof in the Map Records of Harris County, Texas, and subject to this Declaration. Homesites may be comprised of more than one Lot. Each such Lot will be subject to the rights and duties of membership in the Association. There shall be an assessment due for each Lot owned as defined by the then plat of record.
- P. "Master Plan" shall mean and refer to the proposed land use plan for the development of Barker Lake as it may be determined by Declarant in its sole and absolute discretion, from time to time, which plan includes the property described on Exhibit "A". Said Master Plan may include all, none, or a portion of the property described on Exhibit "B" or such other property which Declarant may, without the obligation to do so, from time to time subject to this Declaration by a subsequently recorded Supplemental Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan bar its later annexation in accordance with this Declaration.
- Q. "Member" means an Owner, as defined in this article, who is in good standing per Article V, Section A.
- R. "Owner" means an owner of any Lot within the Property. Persons or entities holding title to a Lot only as a lienholder shall not be an Owner for purposes of this Declaration.
- S. "Property" means all of the property subject to this Declaration, as more properly described on attached Exhibit "A" as well as Eligible Property described on attached Exhibit "B" as additional property is annexed into Barker Lake as allowed under this Declaration.
- T. "Recreational Sites" means Common Area that is set aside for use as recreational facilities, reserves, or green space.
- U. "Special Assessment" means an assessment levied under Article XIII, Section D for a specific purpose.
- V. "Supplemental Declaration" means a separate written document containing amendments or modifications to this Declaration which may annex Eligible Property, which is recorded in the Real Property Records of Harris County, Texas and any other county in which all or a portion of the Property is located.

ARTICLE II. PURPOSE AND INTENT.

Barker Lake Subdivision as initially planned, is intended to be a mixed-use development that is planned to feature residential, recreational and possibly commercial uses.

This Declaration shall serve as the means by which design, maintenance and use of the Property and Eligible Property anticipated to be a part of Barker Lake will be established. The

Master Plan of the Declarant for Barker Lake shall be subject to change as necessary in the sole and absolute discretion of the Declarant.

ARTICLE III. PROPERTY SUBJECT TO RESTRICTIONS.

A. Exhibit "A" and Exhibit "B"

Exhibit "A" contains the Property that is initially encumbered by this Declaration and is therefore a part of Barker Lake Subdivision. Owners of Property contained on Exhibit "A" are Members of the Association and have executed this Declaration.

Exhibit "B" contains Eligible Property which, may without obligation, be eligible to become annexed into Barker Lake Subdivision. The annexation shall occur by the consent of the owner of the property to be annexed and the Declarant, and shall be evidenced by a written recorded document.

B. Annexation of Additional Property

Without the joinder of any other Owners or Members, the Declarant reserves the exclusive right for the twenty-five (25) years following the execution of this Declaration to annex any or all of the Eligible Property included on Exhibit "B" hereto. Such annexation shall be accomplished by the execution and filing for record a Supplemental Declaration setting forth the land being annexed and/or the specific restrictions relating to such property if different from this Declaration, provided the maintenance fee provision shall be uniform as to all Lots.

Furthermore, without the joinder of any other Owners or Members, the Declarant shall reserve the exclusive right for twenty-five (25) years following the execution of this Declaration to add additional land into Exhibit "B", other than the Eligible Property defined within Exhibit "B" hereto, subject to the consent of the owner of such additional land, thereby increasing the amount of Eligible Property.

The right of the Declarant to annex land under this Section shall pass to the Association upon the expiration of the twenty-five (25) year term granted above or upon the termination of Class "B" Membership pursuant to Article V, Section C, whichever occurs first

ARTICLE IV. SUPPLEMENTAL

A. Recording

Declarant may subject additional property to the Property by the recording of a Supplemental Declaration in the Real Property Records of Harris County, Texas.

B. Purpose

The Supplemental Declaration may serve as an annexation document and/or impose additional and/or different covenants, conditions and restrictions provided that the Association has the right to collect maintenance assessments on a uniform basis with other Lots in the Property.

ARTICLE V. MEMBERSHIP AND VOTING RIGHTS.

A. Eligibility

Eligibility to vote or serve as a representative, director or officer shall be predicated upon a Member being in good standing with the Association. To be in good standing, the Member must have all assessments of every type and category paid up to date and have no

outstanding financial obligations to the Association that are delinquent. Additionally, no Member shall be allowed to vote or hold office if that Member is noted of record or within the records of the Association to have a deed restriction violation on one or more Lots in Barker Lake.

B. Membership

The sole criteria to become a Member of the Association is to hold ownership of a Lot within the Property. This is not to imply that any holder of a mere security interest (such as a mortgagee, or holder of any other lien against property) would be a Member, unless that holder of the security interest foreclosed and thereby became the Owner of the Property. Membership is appurtenant to and runs with the land. Membership is not severable as an individual right and cannot be separately conveyed to any party or entity. Multiple owners of any single Lot must vote in agreement (under any method they devise among themselves), but in no case shall such multiple Owners cast portions of votes. The vote attributable to any single Lot must be voted in the same manner (i.e. all votes for, or all votes against a particular issue).

All duties and obligations set forth in this Declaration or any Supplemental Declaration are the responsibility of each Member. No waiver of use of rights of enjoyment created by this Declaration shall relieve Members or their successors or assigns of such duties or obligations. Mandatory membership shall begin with the execution of this Declaration and pass with title to the land (regardless of any method of conveyance) to any subsequent grantee, successor, or assignee of Members.

C. Voting Rights

The Association shall have two classes of membership, Class A and Class B, as follows:

1. Class A Membership:

Class A Members shall be all Members with the exception of Class B Members, if any. Each Class A Member's voting rights shall be based on the number of Lots owned and shall be determined as follows:

One (1) vote shall be granted per platted Lot.

2. Class B Membership:

Class B Members shall include the Declarant and such Owners as the Declarant may, in its sole discretion, confer Class B Membership status upon. Each Class B Member's voting rights shall be based on the number of Lots owned, and shall be determined as follows:

Ten (10) votes shall be granted per platted Lot.

Declarant shall retain control and authority to appoint all members of the Board of Directors of the Association until the Declarant has sold all of the platted lots, the Declarant desires to release such control and authority to the Association as evidenced by an instrument recorded in the Real Property Records in the county or counties where the Property is located, or January 1, 2027, whichever occurs first. At such time, any remaining Class B Members shall be converted to Class A members and elections shall be held to elect the members of the Board of Directors of the

Association pursuant to the provisions of the Articles of Incorporation and the By-Laws of the Association.

D. Voting Procedures

Class A and Class B Members shall exercise their votes as set out in the By-Laws.

ARTICLE VI. EFFECTIVE DATE OF DECLARATION.

This Declaration shall be effective as of the date this document is recorded in the Real Property Records of Harris County, Texas.

ARTICLE VII. USE RESTRICTIONS.

A. Residential Uses Permitted

Homesites within Barker Lake shall be used exclusively for single-family residential purposes. The term "single-family" as used herein shall refer not only to the architectural design of the Dwelling but also to the permitted number of inhabitants, which shall be limited to a single family, as defined below. No multi-family Dwellings may be constructed on any portion of the Property. No building, outbuilding or portion thereof shall be constructed for income property, such that tenants would occupy less than the entire Homesite. It is permitted for tenants to lease a residence in Barker Lake, so long as tenants are leasing the entire land and improvements comprising the Homesite.

No Homesite shall be occupied by more than a single family. For purposes of these restrictions, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit and the household employees of such household unit. It is not the intent of the Declarant to exclude from a Homesite any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

B. Non-Permitted Uses

1. No business nor business activity, whether for profit or not, shall be permitted in or on any Homesite, except that an Owner or occupant may conduct business activities that are merely incidental to the Owner's residential use within a Dwelling so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property; (c) the business activity does not involve visitation of the Dwelling or Homesite by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of Barker Lake, and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of Barker Lake, as may be determined in the sole discretion of the Board. A day-care facility, church, nursery, pre-school, or other similar facility is expressly prohibited.

The terms "business" and "trade" as used in this provision shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the

manufacture or provision of goods or services for or to other persons other than the provider's family, regardless of whether: (i) such activity is engaged in full or part-time (ii) such activity is intended to or does not generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Dwelling shall not be considered a trade or business within the meaning of this Section. This Section does not apply to any activity conducted by the Declarant or by a Builder with approval of the Declarant with respect to its development and sale of the Property. Garage sales or yard sales (or any similar vending of merchandise) conducted on any Homesite shall be considered business activity and therefore prohibited. The Association may, but shall not be obligated to, sponsor, organize or otherwise provide for a community wide garage sale.

No business vehicles displaying commercial signs or advertising shall be permitted to be parked within public view in Barker Lake, other than service vehicles contracted by owners of Homesites to perform specific services. No vehicles with more than two axles shall be permitted to be parked or stored for a period in excess of twelve (12) hours in a residential section of Barker Lake, without prior written permission of the Association, whose approval will be issued at its sole and absolute discretion.

2. No livestock, domestic or wild animals, nor plants or crops shall be raised on any Homesite or the Property for the purpose of breeding or selling same, whether for profit or not. Exchange of such animals, plants or produce for anything of value to the seller shall constitute a sale of the merchandise and therefore prohibited under this provision.

C. Other Uses - Potential for Multi-Family and Commercial Use Tracts

The Eligible Property may generally be used for any residential, multi-family, or commercial purposes, unless subject to this Declaration, whereby restricting it to use as set out herein.

D. Parking Prohibited Vehicles

No motor vehicles or non-motorized vehicle, boat, trailer, marine craft, recreational vehicle, camper-rig off of truck, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement, right-of-way, unless such vehicle or object is completely concealed from public view inside a garage or enclosure approved by the ARC. Passenger automobiles, passenger vans, motorcycles, or pick-up trucks that: (a) are in operating condition; (b) as qualified by current vehicle registration and inspection stickers; (c) are in daily use as motor vehicles on the streets and highways of the State of Texas; (d) do not exceed six feet nine inches (6'9") in height, or eight feet (8') in width and (e) have no commercial advertising located thereon, may be parked in the driveway on a Lot, however, no vehicle shall be parked so as to obstruct or block a sidewalk or be parked on a grassy area. The restriction concerning commercial advertising shall not apply to any vehicles, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity. Overnight parking of any vehicles in the street is prohibited. Owners or occupants of Lots may seek a temporary variance from this restriction for their guests; however, any such request for a variance must receive the prior approval of the Board.

Except that owners of lake front Lots may have one non-motorized or electric boat so long as said boat is properly tied (attached) to a dock adjacent to the rear lot line of the Owners Lot. While on the Lot, boats shall be covered, maintained and stored in a neat and attractive manner. Boats shall not be stored in a way that they will hold water.

No more than three (3) vehicles (passenger cars or non-commercial trucks or vans consistent with the residential use of a Homesite) may be parked on the driveway of a Homesite at any time. Such vehicles to be parked on a Homesite must meet the restrictions of this Declaration and at all times be operable, have current license tags, state inspection stickers, and comply with current mandatory insurance under the laws of the State of Texas, unless otherwise completely concealed in an enclosed garage. All vehicles parked within Barker Lake shall also be maintained in a manner such that the appearance of the vehicles do not detract from the marketability and appearance of Barker Lake. No vehicle that cannot physically fit within the designed garage of the Dwelling with the door closed will be construed as a vehicle incident to residential use of a Homesite. Additional rules and regulations for the use and parking on private and/or public streets may be promulgated by the Association.

Recreational vehicles, such as mobile homes, campers, and boats, are not considered vehicles incident to the residential use of a Homesite and therefore are not permitted to be stored on Homesites for any period of time. A recreational vehicle with not more than two (2) axles may be parked in front of or on the Homesite for up to forty-eight (48) hours for loading and unloading only.

Parking of any vehicle other than in a driveway of a Homesite or other paved area provided for parking for more than forty-eight (48) hours is expressly prohibited.

E. Screening

No Member or occupant of any portion of the Property shall permit the keeping of articles, goods, materials, refuse, trash or garbage containers, air-conditioners, storage tanks, or like equipment in the open, exposed to public view, or exposed to view from adjacent Homesites. All such items must be screened from view and placed in a location first approved in writing by the ARC. Such screen shall be of a height at least equal to that of the materials or equipment being stored, but in no event shall such screen be more than six feet (6') in height. Added screening must also be provided to shield such stored materials and equipment from grade view from adjacent Dwellings.

F. Outside Storage and Trash Collection

No equipment, machinery, or materials of any kind or nature shall be stored on any Homesite forward of the fence at the front wall, of the house situated thereon, unless the equipment, machinery or materials is being used temporarily (not more than one week) and is incident to repair or construction of the Homesite. All equipment, machinery, and materials shall be properly stored out of sight of every other Homesite immediately after use of such item, and all trash, debris, excess, or unused materials or supplies shall likewise be disposed of immediately off of the Homesite, or stored out of view until trash collection occurs.

Trash may only be placed outside for collection the evening before collection. Such trash must be contained to protect from animals or spillage and trash cans must be removed from sight the same evening of collection.

G. Signs

No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following:

1. For Sale Signs. An Owner may erect one (1) sign on his Lot, not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than 3' above the surface of such Lot advertising the property for sale.
2. Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than thirty (30) days in advance of the election to which they pertain and shall be removed within three (3) days after such election, and so long as the sign is not more than 3' x 3' and is fastened only to a stake in the ground.
3. School Spirit Signs. Signs containing information about one or more children residing in the Dwelling and the school they attend shall be permitted so long as the sign is not more than 3' x 3' and is fastened only to a stake in the ground. There shall be no more than one sign for each child under the age of eighteen (18), residing in the Dwelling, and said signs may not be displayed more than ten (10) days in any calendar month, for more than three (3) months in a calendar year.
4. Security Signs/Stickers. Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the Dwelling shall be permitted so long as the sign is not more than 8" x 8" or the sticker is no more than 4" x 4". There shall be no more than one sign and no more than four (4) stickers located on the windows or doors.

All signs within Barker Lake are subject to the Builder Guidelines and Bulletins promulgated by the ARC.

A Builder and/or the Declarant may place certain information and advertising signs on Lots without the prior permission of the ARC, so long as such signs are similar to those listed as acceptable for Builder use in the Builder and/or Architectural Guidelines and Bulletins promulgated by the ARC and so long as such signs do not otherwise violate this Declaration.

If any sign is placed within Barker Lake in violation of this Declaration, the Association or its agents shall be authorized to enter upon any Lot or Homesite and remove and/or dispose of any such sign violation, and in doing so shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry, removal and/or disposal nor in any way shall the Association or its agent be liable for any accounting or other claim for such action.

H. Reservation of Minerals

The Property and any future land made subject to this Declaration are hereby subjected to the following reservation and exception: Declarant hereby reserves unto itself and its successors, assigns and predecessors in title in accordance with their respective interests of record all oil, gas and other minerals in, on and under said land but Declarant on behalf of itself and its successors, and assigns hereby waives the right to use the surface of the land, provided that

Declarant hereby retains and reserves the right on behalf of itself and its successors and assigns to pool the land with other lands for development of oil, gas and other minerals and the right to drill under and through the subsurface of the land below the depth of one hundred feet (100') by means of wells located on the surface of land or easements owned by Declarant or other owners of oil, gas or other minerals. Such exceptions, retained rights and reservations shall inure to the benefit of Declarant, and its respective successors and assigns in accordance with their respective interest of record.

I. Common Areas

The Association, subject to the rights of the Members set forth in this Declaration and any amendments or Supplemental Restrictions, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon and shall keep it in good, clean, attractive and sanitary condition. No Member may appropriate any portion of the Common Areas or any improvement thereon for his or her own exclusive use. Any Member or his or her guests, family or invitees that causes damage to the Common Area shall be financially responsible for said damage. The cost of repair, if not timely paid by the Member (within thirty (30) days) shall be assessed against the Member's Homesite, or Unit and secured by the continuous lien set forth in Article XIII, Section A of this Declaration.

J. Window Treatments

Within three (3) months of occupying a Dwelling on any Homesite, an Owner shall install appropriate window treatments in keeping with the aesthetics of Barker Lake. Appropriate window treatments would include, by way of illustration, curtains and draperies with backing material of white, light beige, cream, light tan, or light gray; blinds or miniblinds of the same colors or natural stained wood; and/or shutters of the same colors or natural stained wood. No other window treatment color may be visible from the exterior of the Dwelling.

Expressly prohibited before and after the initial three (3) months of occupancy are any temporary or disposable coverings not consistent with the aesthetics of Barker Lake, such as reflective materials, newspapers, shower curtains, fabric not sewn into finished curtains or draperies, other paper, plastic, cardboard, or other materials not expressly made for or commonly used by the general public for window coverings in a residential subdivision of the same caliber as Barker Lake.

K. Antennas

No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any Homesite, which is visible from any street, common area or other Lot unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a visible location as approved by the ARC. The ARC may require as much screening as possible while not substantially interfering with reception. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Property. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No broadcast or MMDS antenna mast may exceed the height of the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be

permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property. The Declarant by promulgating this section is not attempting to violate the Telecommunications Act of 1996 ("the Act"), as may be amended from time to time. This section shall be interpreted to be as restrictive as possible while not violating the Act.

L. General Nuisances

No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, animal, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding Homesites, Recreational Sites or Common Areas.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Property. There shall not be maintained any plants, animals, device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on the Property, unless required by federal, state or local regulation. The use and discharge of firecrackers and other fireworks is prohibited within the Property.

It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Homesite. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, that might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any visible part of the Property. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours.

M. Tree Removal

No trees greater than three (3) caliper inches to be measured at a point six (6) inches above grade shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved by the ARC. In the event of an intentional or unintentional violation of this Section, the violator may be required to replace the removed tree with one (1) or more comparable trees of such size and number, and in such locations, as the Association may determine necessary, in its sole discretion, to mitigate the damage.

N. Animals and Pets

No animals, livestock (including swine of any kind) or poultry of any kind shall be raised, bred, or kept on any portion of the Property, except that dogs, cats, or other usual and common household pets, not to exceed a total of three (3) pets, may be permitted in a

Dwelling. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. No pets are permitted to roam free. If, in the sole discretion of the Association, any pet endangers the health, makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners of other Dwellings or the owners of any portion of the Property, it shall be removed upon request of the Board. If the owner fails to honor such request the pet may be removed at the direction of the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs and cats shall at all times whenever they are outside a Dwelling be confined on a leash held by a responsible person.

O. Swimming, Pools/Spas

No above ground swimming pools or spas are permitted. All swimming pools and spas require architectural approval as set out in Article VIII herein.

P. Out Buildings/Accessory Buildings

No out building and/or accessory building (including, but not limited to sheds, greenhouses, gazebos, play houses, shade trellis) shall be constructed or placed within Barker Lake without the prior written approval of the ARC. The ARC shall have the right without the obligation to promulgate rules, regulations and guidelines regarding the size, quality, location and type of these structures.

Q. Lakes, Ponds and Other Water Bodies

Use of the lakes, ponds, or other bodies of water within Barker Lake, if any, shall be limited to non-motorized or electric boats not to exceed twelve feet (12') in length. The Board of Directors has the right to promulgate rules and regulations governing the use of the lakes, ponds, and other bodies of water. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or other bodies of water within or adjacent to Property.

Owners whose Lot abuts any lake, pond or other bodies of water shall take care and shall not permit any trash, fertilizers, chemicals, petroleum products, environmental hazards or any other foreign matters to infiltrate the lake, pond or other bodies of water within Barker Lake.

Any Owner permitting or causing such infiltration shall indemnify and hold harmless the Association for all costs of clean up and remediation necessary to restock the lake, pond or other bodies of water to its condition immediately prior to said infiltration.

Notwithstanding the foregoing, the Association, and the Declarant (for so long as the Declarant owns property that is or may be subjected to this Declaration) may use and regulate the use of any lakes, ponds, or other bodies of water within Barker Lake for the irrigation of the Common Areas, for any other purpose deemed appropriate by the Board or Declarant, subject to the terms of any easement agreement affecting such use. The Declarant's rights under this Section shall be superior to any rights of the Association.

R. Docks

No docks, piers, or other structures shall be constructed on or over any body of water within Barker Lake without the prior written approval of the ARC as provided herein.

S. Deed Restriction Enforcement

1. Authority to Promulgate Rules and Regulations:

The Board of Directors has the authority to promulgate reasonable rules and regulations concerning enforcement of the covenants and restrictions contained in this Declaration, any Supplemental Declaration and/or amendments concerning the use of Common Areas. In the event there is an inconsistency between these Restrictions and the Builder Guidelines, the most restrictive provision shall control.

2. Attorney's Fees and Fines:

In addition to all other remedies that may be available, the Association has the right to collect attorney fees and/or fines as set by the Board from any Owner that is in violation of this Declaration, any applicable Supplemental Declaration or amendments, any Architectural Guidelines, the Building Guidelines, or any other rule or regulation promulgated by the Association.

3. Remedies:

Every Owner shall comply with all provisions of this Declaration, the By-Laws, and the rules and regulations of the Association, all other dedicatory instruments of the Association and any amendments or supplements to any of the foregoing. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association. In addition, the Association may avail itself of any and all remedies provided in this Declaration, any amendment, Supplemental Restriction, the By-Laws or any other dedicatory instruments.

4. Enforcement by Owners:

Each Owner is empowered to enforce the covenants.

T. Easements:

1. Utilities and General:

There are hereby reserved unto Declarant, so long as the Declarant owns any other Property or Eligible Property, the Association, and the designees of each (which may include, without limitation, Harris County and any utility) access and maintenance easements upon, across, over, and under all of the Property and Eligible Property to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, monitoring and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on Property or Eligible Property that Declarant owns or within easements designated for such purposes on recorded plats of the Property or Eligible Property. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Dwelling; any damage to a Homesite resulting from the exercise of this easement shall promptly be repaired by,

and at the expense of, the person or entity exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Homesite.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, cable company and natural gas supplier easements across all the Common Areas for ingress, egress, installation, reading, replacing, repairing and maintaining utility meter boxes, installation equipment, service equipment, and any other device, machinery or equipment necessary for the proper functioning of the utility; however, the exercise of this easement shall not extend to unauthorized entry into the Dwelling on any Homesite, except in an emergency. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property, or Eligible Property, except as may be approved by the Board of Directors or Declarant.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions or all of the Common Area to Harris County, Texas, or to any other similar local, state or federal governmental entity.

2. Easements for Lake and Pond Maintenance and Flood Water.

Declarant and Association reserve for itself and its successors, assigns and designees the non-exclusive right and easement, but not the obligation, to enter upon the lakes, ponds, and other bodies of water located within the Property (a) to install, keep, maintain and replace pumps in order to obtain water for the irrigation of any of the Common Area, (b) to construct, maintain and repair any wall, dam, or other structure retaining water therein, and (c) to remove trash and other debris and fulfill their maintenance responsibilities as provided in this Declaration. Declarant's rights and easements hereunder shall be transferred to the Association at such time as Declarant shall cease to own Property subject to this Declaration, or such earlier time as Declarant may decide, in its sole discretion, and transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Property abutting or containing any portion of any of the rivers, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights and responsibilities under this Section.

There is further reserved, for the benefit of Declarant, the Association, and their designees, a perpetual, non-exclusive right and easement of access and encroachment over Common Areas and Homesites (but not the Dwellings thereon) extending from the rear Lot line of Lots bordering any lakes, ponds or other bodies of water a distance of twenty feet (20'), in order: (a) to temporarily flood and back water upon and maintain water over such portions of the Property; (b) to fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the lakes, ponds or other bodies of water within the Common Areas; (c) to maintain and landscape the slopes and banks pertaining to such lakes, ponds or other bodies of water; and (d) to enter upon and across such portions of the Property for the purpose of exercising rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other person

or entity liable for damage resulting from flood due to hurricanes, heavy rainfall, or other natural disasters.

3. Easements to Serve Additional Property:

The Declarant and its duly authorized agents, representatives, and employees, as well as its designees, successors, assignees, licensees and mortgagees, shall have and there is hereby reserved an easement over the Common Areas for the purposes of enjoyment, use, access and development of the Eligible Property, whether or not such Property is made subject to this Declaration. This easement includes but is not limited to a right of ingress and egress over the Common Areas for construction of roads and for tying in and installation of utilities on the Eligible Property.

Declarant agrees that if an easement is exercised for permanent access to the Eligible Property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance to any access roadway serving the property.

Such agreement shall provide for sharing of costs based on the ratio that the number of Dwellings or Buildings on that portion of the property served by the easement and not made subject to this Declaration bears to the total number of Dwellings and Buildings within the Property and on such portion of the property.

4. Monuments and Fences:

The Association is hereby granted an easement to place, maintain and repair a monument or marker at any entrance to Barker Lake.

All fencing installed on the portion of lake front Lots which fronts the lake shall be wrought iron or tubular steel and shall be in a location and of a material and design as required by the Building Guidelines, this section, and as approved by the ARC which locations must be on the Owner's Lot and at least five feet (5') from the waters edge (at average height of lake).

On all lake front Lots, side fencing between Lots shall be required and shall be in a location and of a material and design as required by the Building Guidelines, this section, and as approved by the ARC. Approved wood fencing shall extend along the side property line from the rear wall of any approved improvements in accordance with the Building Guidelines and as approved by the ARC. The last five feet (5') of said wood fencing shall transition to a height of four feet (4') where a minimum of twenty feet (20') of approved wrought iron or tubular steel fence shall be located and run along the side property line, which shall not exceed four feet (4') in height and shall be identical in construction and design to the fence which separates the Lot from the lake (if any is constructed) and shall extend to a point no closer than five feet (5') to the edge of the lake, at its average height

On all other Lots, side and rear fencing shall be required and shall be of a material and design in accordance with the Building Guidelines and as approved by the ARC.

Owner shall be responsible for the maintenance, repair and/or replacement of all fences in existence at time of transfer from Builder to Owner, with the exception that

all fences which border Common Areas shall be the property of the Association and will be the responsibility of the Association to maintain. Such fences shall be deemed an improvement of the Common Area.

It shall be the responsibility of each Owner to maintain in good working condition all gates in accordance to standards set by the City and County where the Property or any portion thereof is located, and the State of Texas.

The decision to place a rear fence and/or gates on lake Lots shall be the decision of the Lot Owner. The continuing compliance with any revisions in the applicable state or city laws shall be the responsibility of the Lot Owner. Lot Owner agrees to indemnify and hold harmless Association for any liability for personal injury (including death) or property damage as a result of the Lot Owners failure to erect and/or maintain a fence and/or gates.

ARTICLE VIII. ARCHITECTURAL RESTRICTIONS.

A. Barker Lake Architectural Review Committee - "ARC"

The initial ARC shall be composed of three (3) individuals designated by Declarant, one (1) of whom may be designated as Representative to act on behalf of the ARC. The Declarant reserves the right to appoint replacements as necessary by reason of resignation, removal or incapacity. The Declarant shall retain the right of ARC appointment until the earlier of:

1. until the Declarant does not own any of the Eligible Property, or
2. when the Declarant so desires to relinquish its authority over ARC appointment.

At such time, the Board of Directors of the Association shall have the right to replace such ARC members by duly appointing three Owners in good standing with the Association. The Board of Directors reserves the right to appoint replacements as necessary by reason of resignation, removal or incapacity. Such removal and/or appointment shall be at the sole discretion of the Board of Directors.

The Board of Directors shall have the right to review any action or non-action taken by the ARC and shall be the final authority.

B. ARC Approval Required

No buildings, additions, modifications or improvements shall be erected, placed or performed on any Homesite until the construction plans and specifications including, but not limited to, the site plan, design development plan, and exterior plan have been submitted in duplicate to and approved in writing by the ARC as hereinafter provided. Builder may submit their design plans as master design plans, which plans shall include all specifications, including specifications as to brick color and paint color, that may be used when building each design. The ARC or Board of Directors may, at their sole discretion, retain and/or delegate review of plans and specifications to a designated, AIA architect experienced and qualified to review same, who may then render an opinion to the ARC or Board of Directors. Approval of plans and specifications shall not cover or include approval for any other purpose and specifically, but without limitation, shall not be construed as any representation as to or responsibility for the design of the improvement or the ultimate construction thereof. In the event the ARC fails to approve such plans and specifications within thirty (30) days after the receipt thereof, they shall be deemed to be approved, subject to compliance with this

Declaration as recorded. The ARC or its assignee, at its sole discretion and to the extent wherein not expressly prohibited by this Declaration and any Supplemental Declaration, is hereby permitted to approve in writing deviations in the general use restrictions set forth in Article VII in instances where, in its judgment, such deviations will result in a more common beneficial use and enhance the overall development plan for the Property. In the event the ARC fails to approve a written request for a deviation in the general use restrictions within thirty (30) days after receipt thereof, such request shall be deemed to be disapproved. The approval of a deviation in the general use restrictions by the ARC does not obligate the ARC to approve a similar deviation at a later time. Notwithstanding any other provision contained herein, any Dwellings, additions, or improvements erected or placed on any Homesite shall be deemed to comply with the building requirements of the ARC and related covenants contained in the Declaration unless the ARC so notified the Owner in writing within four (4) years from the completion thereof. This provision, however, shall not be deemed a waiver of the right of the ARC or Declarant to enforce the continuing restriction of use contained herein.

The ARC shall have the authority hereunder to require any Owner or Owner's agents or contractors to cease and desist in constructing or altering any improvements on any Property, where such actions have not first been reviewed and approved, constitute a violation of this Declaration, the Building Guidelines or any other documents promulgated by the ARC. The violating Owner shall remove such violating improvements or sitework at its sole expense and without delay, returning same to its original condition or bringing the Homesite into compliance with this Declaration, Building Guidelines, ARC documents and any plans and specifications approved by the ARC for construction on that Homesite. If an Owner proceeds with construction that is not approved by the ARC, or that is a variance of the approved plans, the Association may assess fines as provided in Article XVI, Section F and may continue to assess such fines until ARC approval is granted or the violation is removed. This Declaration is notice of such liability for violation and Owners hereby agree to bear the cost and expense to cure any violations according to this provision, regardless of the substantial cost, time or loss of business involved.

Written notice may be delivered to Owner or any agent or contractor with apparent authority to accept same and notice shall be binding on Owner as if actually delivered to Owner.

The ARC or its agents or assigns shall have the right, but not the obligation, to enter the Property to determine if violations of this Declaration, the Building Guidelines, or any other documents promulgated by the ARC exist. In so doing, the ARC shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry nor in any way shall the Association or its agent be liable for any accounting or other claim for such action.

The ARC shall have the right to set time constraints for both the commencement and completion of construction which constraints shall be no less than ninety (90) days [after which date a new approval must be obtained] from approval of the plans to commence construction and nine (9) months from the commencement date to complete construction.

The ARC has the right to charge a reasonable review fee, to be established by the Board of Directors, for review of any plans or specifications submitted for approval to the ARC.

C. Building Setbacks

No Dwelling or other structure shall be erected nearer to any street or property line than that allowed by the applicable plat or other recorded documents unless first approved in writing by the ARC. Any setback established by the applicable plat shall control, if said setback is more restrictive than the setback established in this Declaration. All Dwellings shall be oriented to the front of the Lot. Driveways shall be permitted to be placed within a setback as approved by the ARC. No Dwelling shall be built within five (5) feet of a side Lot line, except that detached garages shall be built no less than three (3) feet of a side Lot Line, (in which case the ARC shall provide the required setbacks for the detached garage). In addition, no Dwelling or other structure shall be erected so that it would encroach on any utility easement that is recorded on or before the date that the Dwelling or structure is to be constructed.

D. Minimum Square Footage

In Block 4, Lots 1 through 10 and Block 5, Lots 1 through 4 and Block 6, Lots 9 through 21, all one story Dwellings must contain a minimum of 1900 square feet of living area and all two story Dwellings must contain a minimum of 1800 square feet of living area on the first floor and a minimum of 2100 square feet of living area for the entire Dwelling. In Block 1, Lots 1 through 27, Block 2, Lots 1 through 27, Block 3, Lots 1 through 7, Block 4, Lots 11 through 74 and Block 6, Lots 1 through 8, all one story Dwellings must contain a minimum of 1800 square feet of living area and all two story Dwellings must contain a minimum of 1500 square feet of living area on the first floor and a minimum of 2100 square feet of living area for the entire Dwelling, which shall not include porches, garages or other non-air conditioned areas.

E. Landscaping

All open, unpaved space in a Homesite, including but not limited to front, side, and rear building setback areas, shall be planted and landscaped. Landscaping in accordance with the plans approved by the ARC must be installed prior to occupancy of any Dwelling constructed on the Property.

Any significant changes in the existing landscaping on any Homesite must have written approval from the ARC.

F. Grading and Drainage

Topography of each and every Homesite must be maintained with proper grading and drainage systems such that runoff of water (rain or other precipitation, or manmade irrigation) does not cause undue erosion of the subject Homesite itself or any other Homesites, whether adjacent to the subject Homesite or not. Owners causing (either directly or indirectly) erosion or other incidental damage to personal or real property due to inadequate or defective grading or drainage measures on their own Homesite, or because of excess runoff caused by their own irrigation system shall be liable to all such damaged parties for the replacement, repair and/or restoration of such damaged real or personal property.

Owner shall be responsible for ensuring that all local, state and federal rules and regulations regarding drainage and run-off are met.

G. Temporary Structures

Temporary Structures may only be erected on undeveloped Property by Builders or the Declarant with the prior approval of the ARC. Even temporary structures shall be maintained in good condition and all construction debris shall be contained to the Lot where the construction is occurring. Time limitations for such structures are limited to the period of active and exclusive construction and sales within Barker Lake.

H. Garages

Dwellings must have either an attached or detached garage capable of housing a minimum of two (2), and a maximum of three (3) full size vehicles. Garages are required to maintain fully operational overhead doors which are in good condition at all times. Garages on all lake front Lots shall be attached and shall be either front or side loading.

ARTICLE IX. MAINTENANCE.

A. General Maintenance

Each Owner shall maintain and keep in good repair his or her Dwelling and all structures, parking areas and other improvements comprising the Homesite. All structures and other improvements designed to be painted must be kept painted and the paint may not be allowed to become faded, cracked, flaked or damaged in any manner. Grass, vegetation and weeds on each Homesite shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. Grass growing onto or over sidewalks, driveways, and curbs shall be presumed to be unattractive.

B. Landscaping

In the event any Owner of any Homesite within the Property fails to maintain the landscaping, grass or vegetation of a Homesite in a manner consistent with the overall standard established within the Property in the sole discretion of the Board of Directors of the Association, the Association, after ten (10) days' notice to the Owners of the Homesite setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right but not the obligation, through its agent, contractors and/or employees, to enter upon said Homesite or Building Site and to maintain, cut, trim and/or restore such landscaping, grass or vegetation.

C. Dwelling Exterior

In the event any Owner of any Homesite fails to maintain the exterior of the Homesite, including the exterior of the Dwelling or other structures and the parking areas, in a manner consistent with the overall standard established within the Property in the sole discretion of the Board of Directors of the Association, the Association, after thirty (30) days' notice to the Owner of the Homesite setting forth the action intended to be taken by the association and after approved by a two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its agents, contractors and/or employees, to enter upon said Homesite and to repair, maintain, or restore the exterior of the Dwelling, other structure or parking areas.

D. Other Hazards.

To the extent necessary to prevent rat infestation, diminish fire hazards and/or diminish hazards caused by structural damage, the Association shall have the right, but not the obligation, through its agents, contractors and/or employees, to enter any unoccupied Dwelling, or other improvement located upon such Homesite without notice to take the action necessary to prevent such rat infestation, diminish such fire hazards or diminish hazards caused by structural damage.

E. Liability, Cost and Approval

Neither the Association nor its agents, contractors, or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance, landscaping or other work authorized in this Article. The cost of such exterior maintenance, interior hazard diminution, landscaping and other work shall be the personal obligation of the Owner of the Homesite on which it was performed and shall become part of the assessment payable by the Owner and secured by the lien retained in the Declaration. Alternately, the Association or any Owner of a Homesite may bring an action at law or in equity to cause the Owner to bring said Homesite into compliance with these restrictions.

All Members' replacement, repair and restoration practices as to the improvements or any part thereof on Property within Barker Lake are subject to the prior approval of the ARC and must comply with all Builder and/or Architectural Guidelines which may change from time to time, as found necessary and appropriate in its sole discretion.

ARTICLE X. STANDARDS AND PROCEDURES.

The ARC shall establish and promulgate the Building Guidelines, which the ARC may modify or amend as it deems necessary and appropriate for the orderly development of the Property and Barker Lake, including, but not limited to, those portions of the Building Guidelines regarding workmanship, materials, building methods, living area square footage, observance of requirements concerning installation and maintenance of public utility facilities and services, and compliance with governmental regulations. The Building Guidelines may be amended by the ARC without notice, but they shall not be applied retroactively to reverse a prior approval granted by the ARC or the Association to any Owner or prospective purchaser of any Homesite. The rules, standards, and procedures set forth in the Building Guidelines, as same may be amended from time to time, shall be binding and enforceable, against each Owner in the same manner and any other restriction set forth in this Declaration.

ARTICLE XI. VARIANCES.

The Board, upon the recommendation of the ARC, may authorize variances from compliance with any of the architectural provisions of this Declaration, any amendment, Supplemental Declaration or Builder Guidelines, unless specifically prohibited, including restrictions upon height, size, placement of structures, or similar restrictions, when circumstances such as topography, natural obstruction, hardship, aesthetic, or environmental considerations may require. Such variances must be evidenced in writing. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or other applicable document shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or other

applicable document for any purpose except as to the particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all applicable governmental laws and regulation. In the event the ARC or the Board of Directors fails to approve a written request for a variance within thirty (30) days after receipt thereof, such request shall be deemed disapproved.

No granting of a variance shall be relied on by any Member or Owner, or any other person or entity (whether privy or party to the subject variance or not), as a precedent in requesting or assuming variance as to any other matter of potential or actual enforcement of any provision of this Declaration. Action of the ARC or Board of Directors in granting or denying a variance is a decision based expressly on one unique set of circumstances and need not be duplicated for any other request by any party or the same party for any reason whatsoever.

ARTICLE XII. LIMITATION OF LIABILITY.

Neither Declarant, the Association, the ARC, the Board, nor any of the respective officers, agents, managers, partners, directors, members, successors or assigns of the above, shall be liable in damages or otherwise to anyone who submits matters for approval to any of the above-mentioned parties, or to any Owner affected by this Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any matters requiring approval hereunder. Approval by the ARC, the Board, or the Association, nor any of its respective officers, agents, managers, partners, directors, members, successors or assigns, is not intended as any kind of warranty or guarantee as to the integrity or workability of the plans nor the contractors used.

ARTICLE XIII. ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments

The Owners of each Lot, by virtue of ownership of Property within Barker Lake, covenants and agrees to pay to the Association:

1. Annual Assessments
2. Special Assessments

The Annual and Special Assessments together with late charges, attorney's fees, interest and costs shall be a charge and continuing lien upon Lot against which each such assessment is made. Each such assessment, together with late charges, attorney's fees, interest and costs, shall also be the personal obligation of the person or entity who was the Owner of the Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

B. Purpose of Assessments

Annual and Special Assessments levied by the Association shall be used for any legal purpose for the benefit of all Owners as determined by the Association's Board of Directors and, in particular, may by way of example and not limitation or obligation include maintenance, repair or improvement of any Common Area, parkways, private streets and roads, esplanades, setbacks and entryways, police and patrol service, fire protection, emergency medical service, street cleaning, street lighting, mosquito control, other services as may be in the Property's and Owner's interest and for promotion of the recreational interests of the Members which may include payment for recreational improvements on

recreational sites, reserves and/or Common Area. Parkways, streets, roads, esplanades, setbacks and entryways that are not contained in any Common Area may be included in the Association's maintenance if, in the sole discretion of the Board, the maintenance of such areas benefits the Association's Members. Such shared agreements for maintenance and improvement shall require the consent of a majority of the total number of directors of the Association. Additionally, assessments levied by the Association may be used, in the sole discretion of the Association, to pay the Association's fair allocation for maintenance costs for the participation in any agreement among other property owners associations (whether residential, multi-family, commercial or mixed use) in the area and for consolidated programs that provide consistency and economics of scale. Approval to enter such agreements shall require a majority vote of the Board.

C. Annual Assessment

The Property shall be subject to the Annual Assessment, as follows:

1. Creation:

Payment of the Annual Assessment shall be the obligation of each Owner and shall constitute a lien on the Lot(s), binding and enforceable as provided in this Declaration.

2. Rate:

The initial Annual Assessment for the calendar year 2002 established by the Association shall be FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$480.00) per Lot. Declarant shall elect annually in writing to subsidize the approved budget for the subsequent year by paying the difference between the total approved budget for the year less the total amount due by Class A Members, or elect to pay assessments at the rate of fifty percent (50%) of the amount assessed other Class A Members for each Lot owned. Declarant is required to provide written notice to the Board each year by October 1 for subsequent years. Otherwise, each Lot owned by Declarant will be billed at the rate of fifty percent (50%) of the assessment of other Lot Owners. For the calendar year 2002, Declarant elects to subsidize the approved budget by paying the difference between the total approved budget for the year less the total amount due by Class A Members

3. Commencement:

The initial Annual Assessment, prorated according to subparagraph 4 below, shall be due and payable on the date an Owner, other than Declarant, acquires title to the Lot. Annual Assessments shall be due in advance on January 1 for the coming year and shall be delinquent if not paid in full as of January 31 of each year.

4. Proration:

An Owner's initial Annual Assessment shall be made for the balance of the calendar year as determined on a pro-rata basis and shall become due and payable on the date the Owner, other than Declarant, acquires title to the Lot. The Annual Assessment for any year after 2002 shall be due and payable on the first day of January. Any Owner who purchases a Lot or Lots after the first day of January in any year shall be personally responsible for a pro-rated assessment amount for that year.

5. Levying of the Assessment:

The Annual Assessment shall be levied at the sole discretion of the Board. The Board shall determine the sufficiency or insufficiency of the then current Annual Assessment to reasonably meet the expenses for providing services and capital improvements in Barker Lake and may, at its sole discretion and without a vote by the Members, increase or decrease the Annual Assessment in an amount up to twenty percent (20%) over the previous year's Annual Assessment. The Annual Assessment may only be increased or decreased by more than twenty percent (20%) over the preceding years assessment if such increase or decrease is approved by a majority vote at a meeting of the Members called for said purpose at which a quorum is present in person or by proxy. The Annual Assessment shall not be adjusted more than once in a calendar year nor shall any increase be construed to take effect retroactively, unless otherwise approved by Members representing a majority of the members present at a meeting called for said purpose at which a quorum is present in person or by proxy.

D. Special Assessments for Capital Improvements

In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement in the Common Area or any unusual, infrequent expense benefitting the Association, provided that any such assessment shall have the approval of both a majority of the Class A Members and Class B Members present at a meeting duly called for this purpose at which a quorum is present. Such Special Assessments will be due and payable as set forth in the resolution authorizing such assessment and shall be levied only against those Owners subject to the Annual Assessment as set forth in Section C hereof and shall be pro rated in accordance therewith. In no event will such Special Assessment be due less than thirty (30) days from the invoice date.

E. Collection and Remedies for Assessments

1. The assessments provided for in this Declaration, together with late charges, attorneys' fees, interest and costs as necessary for collection, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with late charges, attorney's fees, interest and costs, shall also be the personal obligation of the Owner of the land at the time the assessment became due. This personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.
2. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser: (i) eighteen percent (18%) or (ii) the maximum non-usurious rate of interest. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by reason of non-use or abandonment.
3. In order to secure the payment of the assessments hereby levied, an assessment lien is hereby reserved in each deed from the Declarant to the Owner of each Lot in Barker Lake, which lien may be foreclosed upon by non-judicial foreclosure pursuant to the provisions of Section 51.002 of the Texas Property Code (or any successor

statute); each Owner grants a power of sale to the Association to sell such property upon default in payment by any amount owed. Alternatively, the Association may judicially foreclose the lien or maintain an action at law to collect the amount owed.

The President of the Association or his or her designee is hereby appointed Trustee to exercise the Association's power of sale. Trustee shall not incur any personal liability hereunder except for his or her own willful misconduct.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and give notice of the lien, by executing and recording a document setting forth the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The Association shall also have the right but not the obligation to notify a delinquent Owner's lender, in writing, of such Owners delinquency and default.

In the event the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 (or any successor statute) and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale no less than twenty one (21) days prior to the date of the proposed foreclosure sale, postage prepaid, registered or certified mail, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association or by hand delivery. At any foreclosure proceeding, any person or entity, including but not limited to the Declarant, Association or any Owner, shall have the right to bid for such Property at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period Property is owned by the Association following foreclosure, 1) no right to vote shall be exercised on its behalf; 2) no assessment shall be levied on it. Out of the proceeds of such sale, there shall be paid all expenses incurred by the Association in connection with such default, including attorneys' fees and trustee's fees; second, from such proceeds there shall be paid to the Association an amount equal to the amount of assessments in default inclusive of interest, late charges and attorneys' fees; and, third, the remaining balance, if any, shall be paid to such Owner. Following any such foreclosure, each occupant of any such tract foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant-at-sufferance and may be removed from possession by any lawful means.

F. Subordination of the Lien to Mortgages

The lien for assessments, including interest, late charges, costs and attorney's fees, provided for herein shall be subordinate to the lien of any purchase money mortgage on any Lot or Homesite. The sale or transfer of any Lot or Homesite shall not affect the assessment lien. The sale or transfer of any Lot or Homesite shall not relieve such Lot or Homesite from lien rights for any assessments thereafter becoming due. Purchase money mortgagees of record or other purchasers of a Lot or Homesite which obtain title pursuant to judicial or non-judicial foreclosure of the mortgage, shall not be liable for the share of the assessments or other charges by the Association chargeable to such Lot or Homesite that became due prior to such acquisition of title. However, from the date of foreclosure forward such assessments shall again accrue and be payable to the Association by said mortgagee.

G. Exempt Properties

The following are exempt from payment of assessments under this Declaration: schools, churches and recreational facilities and reserves. All properties dedicated to any accepted use by a municipal county, federal, or other governmental authority and all properties owned by charitable or non-profit organizations that are exempt from taxation by federal laws shall be exempt from the assessments created herein and the Owners thereof shall have no voting rights with respect thereto.

H. Notice of Delinquency

The Association or its agent or designee shall be required to give a written notice of the assessment to any Owner who has not paid an assessment that is due under this Declaration. Such notice must be mailed to the Owner's last known address. The address of the Lot or Homesite shall be presumed to be the address for proper notice unless written notice of another address shall be provided by the Owner to the Association.

ARTICLE XIV. MODIFICATION AND TERMINATION OF COVENANTS

This Declaration may be amended, modified, or terminated by the filing of a recorded instrument executed by the Association or its legal representatives, successors or assigns. So long as Class B membership exists, approval of seventy-five percent (75%) of the combined total votes of Class A and Class B Membership shall be required to amend, modify or terminate this Declaration. However, the Declarant may unilaterally amend this Declaration at any time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and Homesites; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots or Homesites; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots or Homesites; provided, however, any such amendment shall not adversely affect the title to, any Lots or Homesites unless the Owner shall consent thereto in writing. After the termination of Class B membership, approval of a majority of the Owners shall be required to amend, modify or terminate these restrictions and covenants. Upon approval of the Owners, as set out above, and the Association's joinder and approval of said declaration [as evidenced by the President's or Vice-President's signature] the declaration shall be recorded in the Real Property Records of Harris County, Texas, whereupon to the extent of any conflict with this Declaration, the Amended Declaration shall control.

ARTICLE XV. ALTERNATE DISPUTE RESOLUTION.

A. Dispute Resolution

No dispute between any of the following entities or individuals shall be commenced until the parties have submitted to non-binding mediation: Owners, Members, the Board of Directors, officers in the Association, or the Association.

Disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process.

B. Outside Mediator

In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator will either be an attorney-mediator skilled in community association law, a Professional Community Association Manager ("P.C.A.M.") as certified by the Community Associations Institute, or a Certified Property Manager ("C.P.M.") as certified by the Institute of Real Estate Managers. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in Barker Lake, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. The Board shall maintain a list of no less than ten (10) potential mediators, but the parties will be in no way limited to their choice by this list. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than thirty (30) days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

C. Mediation is Not a Waiver

By agreeing to use this Dispute Resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before a mediation may be scheduled.

D. Assessment Collection

The provisions of this Declaration dealing with Alternate Dispute Resolution shall not apply to the collection of assessments by the Association as set out in the Declaration.

E. Term

This Article XV, Alternative Dispute Resolution, shall be in full force and effect for an initial period of three (3) years from the date of execution of this Declaration. However, this Article shall remain in full force and effect unless, at the first open meeting of the Association after such initial period, a majority of the Board of Directors votes to terminate the provisions of this Article XV, Alternative Dispute Resolution.

ARTICLE XVI. GENERAL PROVISIONS.

A. Severability

The invalidity of any one or more of the provisions of this Declaration shall not affect the validity of the other provisions thereof.

B. Compliance with Laws

At all times, each Owner shall comply with all applicable federal, state, county, and municipal laws, ordinances, rules, and regulations with respect to the use, occupancy, and condition of the Property and any improvements thereon. If any provision contained in this Declaration or any Supplemental Declaration or amendment is found to violate any law, then

the provision shall be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by law.

C. Gender and Number

The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof applicable either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

D. Headlines

The titles and captions for this Declaration and the sections contained herein are for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

E. Governing Law

The provisions in this Declaration shall be governed by and enforced in accordance with the laws of the State of Texas. Any and all obligations performable hereunder are to be performed in Harris County Texas.

F. Fines for Violations

The Association may assess fines for violations of the restrictive covenants contained in this Declaration, other than non-payment or delinquency in assessments, in amounts to be set by the Board of Directors, which fines shall be secured by the continuing assessment lien set out in this Declaration.

G. Books and Records

The books, records and papers of the Association shall by appointment, during normal business hours, be subject to inspection by any Member, for any proper purpose. The Articles of Incorporation, By-Laws, and this Declaration shall likewise be available for inspection, by appointment during normal business hours by any Member at the office of the Association for any proper purpose as set forth in the By-Laws of Barker Lake Homeowners Association, Inc.

H. Notices

Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the list known address of the person who appears as Owner on the records of the Association at the time of such mailing.

I. Mergers

Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, the Association's properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation or to a like organization or governmental agency. The surviving or consolidated association shall administer any restrictions together with any Declarations of Covenants, Conditions and Restrictions governing these and any other properties, under one

administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

J. Current Address

Owners are required to notify the Association of their current address at all times. If an Owner fails to notify the Association of their current address, the Association shall use the address of the Lot or Homesite as the current address.

K. Security

NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. NEITHER SHALL THE ASSOCIATION, DECLARANT OR SUCCESSOR DECLARANT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES, OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, DECLARANT OR ANY SUCCESSOR DECLARANT DOES NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, DECLARANT OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, DECLARANT OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 2nd day of May, 2002.

TBJ PROPERTIES, INC.,
a Texas corporation

By: *Joe L. Thomas*
Joe L. Thomas, Executive Vice-President

STATE OF TEXAS

COUNTY OF HARRIS

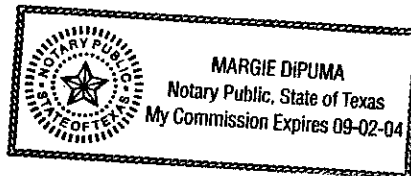
BEFORE ME, the undersigned authority, on this day personally appeared Joe L. Thomas, Executive Vice-President of TBJ PROPERTIES, INC., a Texas corporation, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 2nd day of May, 2002.

Margie Dipuma
Notary Public, State of Texas

After recording return to:

John S. Moody, Jr.
Thompson & Knight LLP
1200 Smith Street, Suite 3600
Houston, Texas 77002



LIENHOLDER CONSENT AND SUBORDINATION

BC Partners, Ltd., a Texas limited partnership, being the sole beneficiary of a mortgage lien and other liens, assignments and security interests encumbering all or a portion of the Property hereby consents to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions to which this Lienholder Consent and Subordination is attached and acknowledges that the execution thereof does not constitute a default under the lien- document or any other document executed in connection with or as security for the indebtedness above described, and subordinates the liens of the lien document and any other liens and/or security instruments securing said indebtedness to the rights and interests created under said Declaration, and acknowledges and agrees that a foreclosure of said liens and/or security interests shall not extinguish the rights, obligations and interests created under this Declaration. No warranties of title are hereby made by lienholder, lienholder's joinder herein being solely limited to such consent and subordination.

BC PARTNERS, LTD., a Texas limited partnership

By: Barker Cypress Land, LLC
Its: General Partner

By: *Joe L. Thomas*
Joe L. Thomas, Executive Vice-President

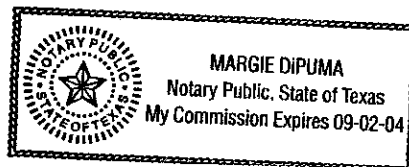
STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Joe L. Thomas, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in his representative capacity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 2nd day of May, 2002.

Margie Dipuma
Notary Public, State of Texas



LIENHOLDER CONSENT AND SUBORDINATION

Wayne Duddlesten, Ltd., a Texas limited partnership, being the sole beneficiary of a mortgage lien and other liens, assignments and security interests encumbering all or a portion of the Property hereby consents to the Barker Lake terms and provisions of this Declaration of Covenants, Conditions and Restrictions- for to which this Lienholder Consent and Subordination is attached and acknowledges that the execution thereof does not constitute a default under the lien- document or any other document executed in connection with or as security for the indebtedness above described, and subordinates the liens of the lien document and any other liens and/or security instruments securing said indebtedness to the rights and interests created under said Declaration, and acknowledges and agrees that a foreclosure of said liens and/or security interests shall not extinguish the rights, obligations and interests created under this Declaration. No warranties of title are hereby made by lienholder, lienholder's joinder herein being solely limited to such consent and subordination.

WAYNE DUDDLESTEN, LTD., a Texas limited partnership

By: Barker Cypress Land, LLC
Its: General Partner

By: *Joe L. Thomas*
Joe L. Thomas, Executive Vice-President

STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Joe L. Thomas, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in his representative capacity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 2nd day of May, 2002.

Margie Dipuma
Notary Public, State of Texas

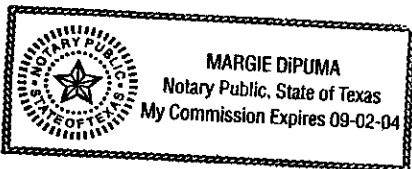


EXHIBIT "A"

PROPERTY

**BARKER LAKE
SECTION ONE**

**FIELD NOTE DESCRIPTION
49.3388 ACRES IN THE
WILLIAM FRANCIS SURVEY, A-260
HARRIS COUNTY, TEXAS**

Being 49.3388 acres out of a 761.3701 acre tract (called 761.1033 acres) in the William Francis Survey, Abstract No. 260 as recorded in Harris County Clerk's File No. F428339 and being more particularly described as follows:

COMMENCING at the northwest corner of said 761.3701 acre tract and the northwest corner of said William Francis Survey;

THENCE S 02° 43' 15" E, along the common line of said 761.3701 acre tract and the said William Francis Survey, a distance of 4823.43 feet to the POINT OF BEGINNING;

THENCE N 47° 15' 24" E, a distance of 10.31 feet to a point;

THENCE S 66° 38' 42" E, a distance of 227.72 feet to a point on a curve to the left;

THENCE along said curve to the left having a radius of 270.00 feet, a central angle of 26° 03' 16" and a chord which bears S 10° 18' 23" W, 121.72 feet in length, a distance of 122.78 feet to a point;

THENCE S 02° 43' 15" E, a distance of 111.68 feet to a point;

THENCE N 87° 16' 45" E, a distance of 110.00 feet to a point;

THENCE N 42° 16' 45" E, a distance of 21.21 feet to a point;

THENCE N 02° 43' 15" W, a distance of 65.00 feet to a point;

THENCE N 00° 41' 16" E, a distance of 65.07 feet to a point;

THENCE N 22° 52' 15" E, a distance of 61.91 feet to a point;

THENCE N 44° 32' 13" E, a distance of 66.95 feet to a point;

THENCE N 47° 15' 24" E, a distance of 300.00 feet to a point;

THENCE S 42° 44' 36" E, a distance of 207.00 feet to a point;

THENCE S 87° 44' 36" E, a distance of 21.21 feet to a point;

THENCE N 47° 15' 24" E, a distance of 110.00 feet to a point;

THENCE S 42° 44' 36" E, a distance of 36.19 feet to a point at the beginning of a curve to the right;

THENCE along said curve to the right having a radius of 318.00 feet, a central angle of 47° 20' 49" and a chord which bears S 19° 04' 11" E, 255.37 feet in length, a distance of 262.78 feet to a point;

THENCE S 85° 23' 47" E, a distance of 60.00 feet to a point on a curve to the right;

THENCE along said curve to the right having a radius of 378.00 feet, a central angle of 06° 02' 27" and a chord which bears S 07° 37' 27" W, 39.83 feet in length, a distance of 39.85 feet to a point at the beginning of a curve to the left;

THENCE along said curve to the left having a radius of 25.00 feet, a central angle of 79° 39' 36" and a chord which bears S 29° 11' 08" E, 32.03 feet in length, a distance of 34.76 feet to a point;

THENCE S 69° 00' 56" E, a distance of 230.45 feet to a point at the beginning of a curve to the left;

THENCE along said curve to the left having a radius of 25.00 feet, a central angle of 90° 00' 00" and a chord which bears N 65° 59' 04" E, 35.36 feet in length, a distance of 39.27 feet to a point in the west line of Barker-Cypress Road (100 feet wide);

THENCE S 20° 59' 04" W, along the said west line of Barker-Cypress Road, a distance of 2633.65 feet to a point at the beginning of a curve to the left;

THENCE continuing along the said west line of Barker-Cypress Road and along said curve to the left having a radius of 3050.00 feet, a central angle of 03° 44' 19" and a chord which bears S 19° 06' 55" W, 198.98 feet in length, a distance of 199.01 feet to a point in the south line of said 761.3701 acre tract;

THENCE S 85° 49' 43" W, along the said south line of the said 761.3701 acre tract a distance of 130.91 feet to a point at the southwest corner of said 761.3701 acre tract, said point being in the west line of said William Francis Survey;

THENCE N 02° 43' 15" W, along said common line of the 761.3701 acre tract and the William Francis Survey, a distance of 3001.80 feet to the POINT OF BEGINNING and containing 49.3388 acres of land.

2:1180640.FN

EXHIBIT "B"
ELIGIBLE PROPERTY

FIELD NOTE DESCRIPTION
47.8238 ACRES IN THE
WILLIAM FRANCIS SURVEY, A-260
HARRIS COUNTY, TEXAS

Being 47.8238 acres (2,083,206 square feet) out of a called 761.1033 acre tract in the William Francis Survey, Abstract No. 260 as recorded in Harris County Clerk's File No. F428339 and being more particularly described as follows:

COMMENCING at the northwest corner of said called 761.1033 acre tract and the northwest corner of said William Francis Survey, from said point a found 1/2 inch iron rod bears N 11° 33' 35" W, 1.14 feet;

THENCE S 02° 43' 15" E, along the common line of said called 761.1033 acre tract and the said William Francis Survey, a distance of 4601.44 feet to the POINT OF BEGINNING in the northerly line of a 170 foot Tennessee Gas Transmission Co. Easement as recorded in Volume 6735, Page 143 of the Harris County Deed Records, from said point a found 5/8 inch iron rod bears N 13° 28' 55" W, 0.51 feet;

THENCE N 47° 15' 24" E, along said northerly line of Tennessee Gas Easement, a distance of 2764.28 feet to a point, from said point a found 5/8 inch iron rod bears N 30° 55' 39" E, 2.37 feet;

THENCE S 42° 44' 36" E, a distance of 45.25 feet to a point;

THENCE N 47° 15' 24" E, a distance of 325.15 feet to a point in the west line of Barker-Cypress Road (100 feet wide);

THENCE S 20° 59' 04" W, along the said west line of Barker-Cypress Road, a distance of 2813.79 feet to a point at the beginning of a curve to the right;

THENCE along said curve to the right having a radius of 25.00 feet, a central angle of 90° 00' 00" and a chord which bears S 65° 59' 04" W, 35.36 feet in length, a distance of 39.27 feet to a point;

THENCE N 69° 00' 56" W, a distance of 230.45 feet to a point at the beginning of a curve to the right;

THENCE along said curve to the right having a radius of 25.00 feet, a central angle of 79° 39' 36" and a chord which bears N 29° 11' 08" W, 32.03 feet in length, a distance of 34.76 feet to a point at the beginning of a curve to the left;

THENCE along said curve to the left having a radius of 378.00 feet, a central angle of 06° 02' 27" and a chord which bears N 07° 37' 27" E, 39.83 feet in length, a distance of 39.85 feet to a point;

THENCE N 85° 23' 47" W, a distance of 60.00 feet to a point at the beginning of a curve to the left;

THENCE along said curve to the left having a radius of 318.00 feet, a central angle of 47° 20' 49" and a chord which bears N 19° 04' 11" W, 255.37 feet in length, a distance of 262.78 feet to a point;

THENCE N 42° 44' 36" W, a distance of 36.19 feet to a point;

THENCE S 47° 15' 24" W, a distance of 110.00 feet to a point;

THENCE N 87° 44' 36" W, a distance of 21.21 feet to a point;

THENCE N 42° 44' 36" W, a distance of 207.00 feet to a point;

THENCE S 47° 15' 24" W, a distance of 300.00 feet to a point;

THENCE S 44° 30' 50" W, a distance of 66.95 feet to a point;

THENCE S 22° 52' 15" W, a distance of 61.91 feet to a point;

THENCE S 00° 41' 16" W, a distance of 65.07 feet to a point;

THENCE S 02° 43' 15" E, a distance of 65.00 feet to a point;

THENCE S 42° 16' 45" W, a distance of 21.21 feet to a point;

THENCE S 87° 16' 45" W, a distance of 110.00 feet to a point;

THENCE N 02° 43' 15" W, a distance of 111.68 feet to a point at the beginning of a curve to the right;

THENCE along said curve to the right having a radius of 270.00 feet, a central angle of 26° 03' 16" and a chord which bears N 10° 18' 23" E, 121.72 feet in length, a distance of 122.78 feet to a point;

THENCE N 66° 38' 42" W, a distance of 227.72 feet to a point;

THENCE S 47° 15' 24" W, a distance of 10.31 feet to a point;

THENCE N 02° 43' 15" W, a distance of 221.99 feet to the POINT OF BEGINNING and containing 47.8238 acres (2,083,206 square feet) of land.