



AFTER RECORDING RETURN TO:

Tim Hagen
Glast, Phillips & Murray, P.C.
2200 One Galleria Tower
13355 Noel Road
Dallas, Texas 75240

**SECOND AMENDMENT
TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
WHISPERING FARMS
Prosper, Collin County, Texas**

THIS SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHISPERING FARMS (this "Amendment") is made by 2002 TUSCANY PARTNERS, L.P., a Texas limited partnership ("Declarant"), as of the 15th day of April, 2008.

WHEREAS, Declarant executed that certain Declaration of Covenants, Conditions and Restrictions for Whispering Farms (the "Original Declaration"), dated December 23, 2003, and recorded in the Real Property Records of Collin County, Texas, under County Clerk's File No. 2004-0001851; and

WHEREAS, Declarant executed that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Whispering Farms (the "First Amendment"), dated July 2005, and recorded in the Real Property Records of Collin County, Texas, under County Clerk's File No. 2005-1031287;

WHEREAS, Declarant executed that certain First Supplementary Declaration of Covenants, Conditions and Restrictions for Whispering Farms (the "First Supplement"), dated May 29, 2004, and recorded in the Real Property Records of Collin County, Texas, under County Clerk's File No. 2004-0115275;

WHEREAS, Declarant executed that certain Second Supplementary Declaration of Covenants, Conditions and Restrictions for Whispering Farms (the "Second Supplement"), dated February 13, 2006, and recorded in the Official Public Records of Collin County, Texas, under Instrument No. 20060216000208760, and re-recorded in the Official Public Records of Collin County, Texas, under Instrument No. 20070919001308350; and

WHEREAS, Declarant executed that certain Third Supplementary Declaration of Covenants, Conditions and Restrictions for Whispering Farms (the "Third Supplement") dated June 11, 2007, and recorded in the Official Public Records of Collin County, Texas, under Instrument No. 20070710000947780. The Original Declaration, as amended by the First Amendment, the First Supplement, the Second Supplement, and the Third Supplement, are herein referred to as the "Declaration";

WHEREAS, Section 9.2 of the Declaration provides that the Declaration may be amended and/or changed upon the express written consent of at least seventy percent (70%) of the outstanding votes of each class of Members of the Association; and

WHEREAS, Declarant has the right to vote at least seventy percent (70%) of the outstanding votes of each class of Members of the Association; and

WHEREAS, Declarant desires to amend the Declaration to exclude certain lots and streets, currently made the subject of the Declaration, from the terms and provisions of the Declaration.

NOW, THEREFORE, Declarant declares that the Declaration is hereby amended as follows:

1. Unless otherwise expressly stated herein to the contrary, capitalized terms used herein shall have the meaning given to them in the Declaration.

2. The following described Lots and Streets are hereby specifically excluded from the definition of the term "Land" as defined in the Declaration:

Lots 1 through 14, Block J of WHISPERING FARMS - PHASE 2, an addition to the Town of Prosper, Collin County, Texas, according to the plat (the "Plat") thereof recorded under County Clerk's File No. 2006-290, Plat Records of Collin County, Texas (the "Lots"), and the portions of Sundance Court and Sundance Lane (the "Streets") shown on the Plat and located within Block J of Whispering Farms - Phase 2.

The Lots and the Streets are excluded and excepted from the real property description attached to the Second Supplement, and shall not be subject to any of the covenants, conditions and restrictions set forth in the Declaration, effective as of the date of this Amendment.

3. Whispering Farms Residential Association, Inc., a Texas non-profit corporation, joins herein to evidence its approval of the terms and provisions of this Amendment.

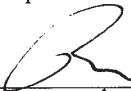
EXECUTED as of the date set forth above.

2002 TUSCANY PARTNERS, L.P.,
a Texas limited partnership

By: 2002 TUSCANY HOLDINGS, LLC,
a Texas limited liability company- General Partner

By: 
Richard B. Platt, President

**WHISPERING FARMS
RESIDENTIAL ASSOCIATION, INC.**,
a Texas corporation

By: 
Name: Michael Henry
Title: CRS

STATE OF TEXAS
COUNTY OF DALLAS

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BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared RICHARD B. PLATT, President of 2002 TUSCANY HOLDINGS, LLC, a Texas limited liability company and the General Partner of 2002 TUSCANY PARTNERS, L.P., a Texas limited partnership, known to 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, in the capacity therein stated and as the act and deed of such entities.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 1st day of April, 2008.

BEID
Notary Public, State of Texas

My Commission Expires:

6.25.2011

Beau Eidson
(Printed or Typed Name of Notary)



STATE OF TEXAS
COUNTY OF DALLAS

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BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Michael Bealy, President of WHISPERING FARMS RESIDENTIAL ASSOCIATION, INC., a Texas corporation, known to 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, in the capacity therein stated and as the act and deed of such corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 1st day of April, 2008.

BEID
Notary Public, State of Texas

My Commission Expires:

6.25.2011

Beau Eidson
(Printed or Typed Name of Notary)

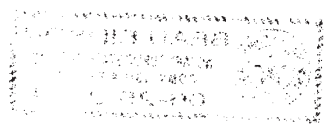


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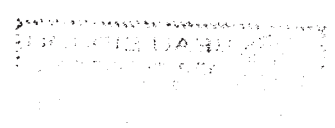
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WHEREAS, Declarant, Mooreland, Savoy, and Southern desire to provide for, among other matters, certain restrictions to protect and preserve the desired character of the community and, to this end, desire to subject the Land to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Land and its present and future owners; and

WHEREAS, Declarant, Mooreland, Savoy, and Southern have deemed it desirable to provide for the creation of agencies to which would be delegated and assigned the powers, duties and rights as may be provided for under this Declaration.

NOW, THEREFORE, Declarant, Mooreland, Savoy, and Southern declare that the Land is and shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I DEFINITIONS

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

1.1 "Architectural Control Committee" shall have the meaning assigned to such term in Section 8.1 hereof.

1.2 "Architectural Guidelines" shall have the meaning assigned to such term in Section 8.2 hereof.

1.3 "Association" shall mean and refer to THE ENCLAVE AT WHISPERING FARMS RESIDENTIAL ASSOCIATION, INC. Prior to conveying any Lot to any other Owner, Declarant shall cause such entity to be organized as a Texas non-profit corporation.

1.4 "Board of Directors" means the board of directors of the Association.

1.5 "Common Area" means the portion of the Land that is not situated within a Lot and any other property rights within the Land which are known, described or designated or which shall subsequently be intended for or devoted to, the common use and enjoyment of the Members. The Common Area may be owned by the Association or the Town of Prosper.

1.6 "Common Improvements" means those improvements initially made by Declarant within the Common Area, together with such other improvements as may be made hereafter by the Association, and shall include the Streets (as such term is defined in Section 9.2 hereof), the guardhouse at the entrance to Sundance Court, the controlled access gates, and the landscaping and appurtenances thereto.

1.7 "Common Properties" means the Common Area and Common Improvements, collectively.

1.8 "Declarant" means 2002 TUSCANY PARTNERS, L.P., a Texas limited partnership and its successors in interest to the Land through (i) a voluntary disposition of all (or substantially all) of the assets of such partnership and/or the voluntary disposition of all (or substantially all) of the right, title and interest of the partnership in and to the Land where such voluntary disposition of right, title and interest expressly provides for the transfer and assignment of the rights of such partnership as Declarant, or (ii) an involuntary disposition of all or any part of the Land owned by Declarant prior to completion of development of the Land as a residential community. No person or entity purchasing one or more Lots from such partnership in the ordinary course of business shall be considered as "Declarant."

1.9 "Land" means the real property in Collin County, Texas, described on Exhibit "A" attached hereto and incorporated herein and such other real property as may be made subject to the terms of the Declaration in accordance with the provisions hereof.

1.10 "Lot" means a residential lot shown as such on the Plat and which is or is intended to be improved with a residential dwelling. Some portions of the Common Area may be platted as a "lot" on the recorded subdivision plat; however, these lots are expressly excluded from the definition of "Lot" as used herein.

1.11 "Member" means a member of the Association.

1.12 "Owner" shall mean and refer to every person or entity who is a record owner of a fee or undivided fee interest in any Lot, including contract sellers. If a Lot is owned in undivided interests by more than one person or entity, each owner shall be an Owner for purposes of this Declaration. A person or entity that owns only a lien or other similar interest in a Lot as security for performance of an obligation is not an Owner with respect to that Lot.

1.13 "Plat" means the subdivision plat of the Land recorded in Volume 2006, Page 48 of the Plat Records of Collin County, Texas, is made subject to the terms hereof in accordance with the terms of this Declaration; as such plat may be modified and amended from time to time hereafter.

1.14 "Properties" means the Land and all improvements thereto, whether now existing or hereafter placed thereon.

**ARTICLE II
PROPERTY SUBJECT TO THE DECLARATION;
ADDITION THERETO**

2.1 Initial Properties. The properties that shall initially be subject to this Declaration shall include the Land and all improvements now or hereafter constructed thereon.

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

(a) The Declarant may add or annex additional real property (whether owned by Declarant or others) to the scheme of this Declaration by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions ("Supplementary Declaration") which shall extend the scheme of the covenants and restrictions of this Declaration to such property; provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not materially inconsistent with this Declaration in a manner which adversely affects the concept of this Declaration.

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

(c) Any additions made pursuant to Paragraphs (a) and (b) of this Section 2.2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added.

(d) Notwithstanding the fact that the Declarant may not be an Owner by virtue of its sale, transfer or conveyance of all of its right, title, and interest in the Properties, the Declarant shall continue to be entitled to implement and exercise all its rights under and pursuant to this Section 2.2 and all of the subsections hereof. Even though the Declarant may not be a Class A or Class B Member prior to an annexation, permitted by this Section 2.2, subsequent to such annexation, the Declarant shall be and become a Class B Member with respect to the Lots owned by it within the Properties, as such Properties have been expanded or increased by the annexation. The Declarant's rights as a Class B Member shall

be governed by and set forth in this Declaration and the Articles of Incorporation and Bylaws of the Association, as same may be amended or altered by, and in accordance with the annexation.

ARTICLE III USE OF PROPERTIES AND LOTS – PROTECTIVE COVENANTS

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

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

3.2 Residential Purposes. Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of any Lot for apartment use. No trade or business of any kind shall be conducted upon said property or any part thereof, except that home occupations that conform to the requirements of the Prosper Development Code are allowed. No structure shall be erected, placed, altered, used or permitted to remain on any property other than detached single family residences with detached or attached private garage for not more than four automobiles, accessory buildings, and servants' quarters if they are employed by any owner of a lot. Servant's quarters or pool cabana houses may be constructed and occupancy may be restricted by action of the Architectural Control Committee.

3.3 Replatting. No Lot shall be resubdivided; provided, however, that Declarant shall have and reserves the right, at any time, or from time to time, to file a replat of the Plat to effect a reconfiguration of any Lots in the Property then owned by Declarant, and subject to obtaining any necessary approval, joinder or consent of the appropriate county and/or municipal authorities. The consent or approval of Owners other than Declarant shall not be required for such replatting.

3.4 Combining Lots. Any person owning two or more adjoining Lots may consolidate such Lots into a single building location for the purpose of constructing one (1) dwelling thereon (the plans and specifications therefore being approved as set forth in this Declaration) and such other improvements as are permitted herein; provided, however, any such consolidation must comply with the rules, ordinances and regulations of any governmental authority having jurisdiction over the Properties. In the event of any such consolidation, the consolidated Lots shall be deemed to be a single Lot for purposes of applying the provisions of this Declaration; provided, however, such Owner shall continue to pay assessments on such Lots as if such Lots had not been consolidated and shall be entitled to one vote for each Lot (determined prior to such consolidation) owned by such Owner. Any such consolidation shall give consideration to easements as shown and provided for on the Plat and any required

abandonment or relocation of any such easements shall require the prior written approval of Declarant (if Declarant owns any Lots) or the Association (if Declarant does not own any Lots) as well as the prior written approval of any utility company having the right to the use of such easements.

3.5 Drainage. Neither the Declarant nor its successors or assigns, shall be liable for, and each Owner hereby waives any right of recovery against Declarant, its successors and assigns for any loss of, use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters.

After completion of building construction on a Lot, the Owner of such Lot shall cause such Lot to be graded so that surface water will flow to streets, alleys, drainage easements, or Common Properties. It shall be the responsibility of each Owner to maintain or modify, if necessary, the drainage characteristics of his Lot so that storm water runoff from such Lot will not run across or collect upon any adjacent Lot. If a retaining wall or underground drainage improvements are necessary to control and prevent drainage from one Lot onto an adjacent Lot, it shall be the responsibility of the Owner of the Lot having the higher surface elevation to construct and maintain the retaining wall or underground drainage improvements.

3.6 Removal of Dirt. The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

3.7 Utilities. The installation and use of any propane, butane, liquid petroleum gas or other gas tank, bottle or cylinder of any type (except portable gas grills) shall require the explicit, itemized approval of the Architectural Control Committee, and, if so approved, the Architectural Control Committee may require that such tank, bottle or cylinder be installed underground. Any control boxes, valves, connection, utility risers or refilling or refueling devices shall be completely landscaped with shrubbery so as to obscure their visibility from the streets within or adjoining the Properties or from any other Lot. Portable toilets will be allowed during building construction.

(a) No individual water supply system shall be permitted on any portion of the Subdivision unless the system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the State of Texas, the Town of Prosper, and the local public health authority, and the individual water supply system is approved, in writing, by the Architectural Control Committee. Approval of such system, as installed, shall be obtained from such authorities.

(b) The individual sewerage disposal system for each residence then shall be designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the State of Texas, and the local

public health authority. Approval of such system, as installed, shall be obtained from such authorities and approved by the Architectural Control Committee.

3.8 Access. No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot except as expressly provided on the Plat, or with the explicit, itemized approval of the Architectural Control Committee.

3.9 Driveways. Each Lot must be accessible to an adjoining street or alley by a driveway suitable for such purposes and approved as to design and location by the Architectural Control Committee before the dwelling located on any such Lot may be occupied or used. Driveways must be constructed of continuous concrete or other materials with the explicit, itemized approval of the Architectural Control Committee.

3.10 Setback Requirements and Building Location. All front, side, and rear setbacks must be approved by the Architectural Control Committee and must meet the requirements of the Town of Prosper Development Code and the requirements set forth on Exhibit "B" attached hereto and made a part hereof for all purposes. The location of the main residence on each Lot and the facing of the main elevation with respect to nearby streets shall be subject to the approval of the Architectural Control Committee. No building or structure of any type shall be erected on any Lot nearer to the property lines than indicated by the minimum building setbacks set forth on Exhibit "B".

3.11 Minimum Floor Space. All floor areas referenced below are for air-conditioned floor area, exclusive of porches, patios, garages, car ports, unfinished bonus rooms, porticos, or breezeways attached to the main dwelling. The main dwelling constructed on each Lot shall contain a minimum of four thousand five hundred (4,500) square feet of living area. In the event additional properties are added to the scheme of this Declaration in accordance with Section 2.2 hereof, the minimum floor space of the main dwelling to be constructed on the developed lots within such properties may be greater or less than the minimum floor spaces set forth above.

3.12 Height. No dwelling or other building on any Lot shall have a height in excess of the maximum height allowed by the Town of Prosper.

3.13 Construction Requirements.

(a) The roof pitch of the main structure shall be 8" x 12" minimum unless otherwise approved by the Architectural Control Committee. The roof pitches on sheds, porches, and other improvements (other than a main structure) may be less than 8" x 12" if approved, in writing, by the Architectural Control Committee. Exterior paint and stain colors, which may be limited to those listed in the Architectural Guidelines, shall have the explicit, itemized approval of the Architectural Control Committee.

(b) Each residence shall have installed on the outside wall thereof a service riser conduit, and the location and length of such conduit must be approved by the Architectural Control Committee.

(c) No above ground-level swimming pools shall be installed on any Lot. Upon explicit, itemized approval of the Architectural Control Committee, above ground-level hot tubs are permitted.

(d) The exterior construction of a single family residence, erected on any Lot shall be at least seventy-five percent (75%) glass, natural and/or cultured stones, Hardi-plank and/or other cementitious-type siding, stucco, brick, cut or split-face CMU or similar materials as approved by the Town of Prosper, Texas, or any combination thereof. The use of wood as an exterior building material shall be limited to a maximum of twenty-five percent (25%) of the total exterior wall surfaces. No extruded foam insulation exterior siding system or similar exterior system shall be allowed within the Subdivision. Siding and construction above the first floor top plate may be concrete impregnated fiber board or similar product. There shall be no wood siding material above the first floor, unless approved, in writing, by the Architectural Control Committee. A wood cornice material at eaves is acceptable at first and second floor roof areas.

(e) Roofs shall be constructed of slate, rubber slate, tile, concrete tile or composition roofing materials having a 30 year guaranteed life of either a Slateblend or Oxford Grey color. Wood-roofing materials are not permitted. No roofing material shall cause glare or reflection on any adjacent property. Upon explicit, itemized approval of the Architectural Control Committee, metal roofing systems and accents such as copper cupolas shall be allowed.

(f) No air conditioning apparatus or other appurtenance shall be installed on the ground in front of a dwelling house. No evaporative cooler shall be installed on the rear wall or the side wall of a dwelling house.

(g) The total land area of a Lot used for accessory buildings shall not exceed twenty-five percent (25%) of the total area designated for the main residence constructed or to be constructed on the Lot. Accessory buildings shall not be permitted within a front yard, but shall be permitted within the side or rear yard of a Lot, as set forth in the Prosper Zoning Ordinances relating to accessory buildings.

(h) The construction of barns, stalls, or sheds for the overnight boarding of horses, ponies, or other animals is prohibited.

3.14 Garages. Each dwelling erected on any Lot shall provide enclosed garage space for a minimum of two (2) conventional automobiles. All garages shall be situated behind the front building line for the Lot. Garage door orientation shall be as follows: A two-car garage

shall not have the garage door (or doors) face the address street of the Lot; A three-car (or more) garage may have one single-car garage door face the street as in a J-swing configuration, or as other wise approved by the explicit, written and itemized approval of the Architectural Control Committee. All garage doors shall be oriented in accordance with the requirements of the Town of Prosper. All garage doors shall be equipped with an automatic and remote-controlled door opener and shall be closed at all times when not in use. All garage doors must be of material, design and color approved by the Architectural Control Committee. Porte cocheres must be approved by the Architectural Control Committee. No carport shall be built, placed, constructed or reconstructed on any Lot. As used herein, the term "carport" shall not be deemed to include a porte cochere. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purposes inconsistent with the garaging of automobiles.

3.15 Lot Grading. Grading or excavation for the construction of a new house may occur following the issuance of a building permit by the Town of Prosper. Grading shall be limited to that area required for the construction of the house. Special consideration shall be given to the preservation of the existing trees and understory. The Architectural Control Committee shall review and approve the site grading plan prior to the start of grading.

3.16 Antenna. No radio or television serial wires or antennas shall be maintained on the outside of any building without the explicit, itemized approval of the Architectural Control Committee, nor shall any free standing antenna towers of any style be permitted.

3.17 Dishes. Up to two (2) exterior satellite dishes or similar devises, not exceeding eighteen inches (18") in diameter, may be located on each Lot; provided, however, the location of any such satellite dish or similar devise must be approved, in writing, by the Architectural Control Committee.

3.18 Fences and Privacy Walls. No fence, privacy wall, wall or hedge shall be erected, placed or altered on any Lot without the approval of the Architectural Control Committee and the design of and materials used in the construction of fences and walls shall comply with the minimum fencing and privacy wall requirements listed in the Architectural Guidelines and Planned Development for Whispering Farms as approved by the Town of Prosper and have the written approval of the Architectural Control Committee. Special fencing requirements may apply to the Lots as set forth in the Architectural Guidelines. All fencing materials will be wrought iron, "pipe and cable" or masonry as approved. No wood fencing shall be permitted. No fence, privacy wall, or hedge shall be erected, placed or altered on any Lot within the front yard setback prescribed on Exhibit "B" attached hereto. No fence, wall or hedge shall exceed eight (8) feet in height, as measured from the final grade of the Lot the fence sits on. The foregoing height limitation shall not apply to fences, walls and hedges along the perimeter of the Land. No chain link fences or other wire type fences shall be erected on any Lot except upon explicit, itemized approval of the Architectural Control Committee. All service and sanitation facilities, clothes lines, wood piles and air conditioning equipment must be enclosed within fences, walls and/or landscaping so as not to be visible from the immediate residential street.

3.19 Retaining Walls. The design and materials for all retaining walls shall be limited to those designs and materials in the Architectural Guidelines and must have the written approval of the Architectural Control Committee for each particular retaining wall.

3.20 Landscaping and Sprinkler System. Any and all plans for the landscaping of front yards and of side yards not enclosed by solid fencing, including alterations, changes or additions thereto shall be subject to the approval of the Architectural Control Committee and shall comply with the requirements listed in the Architectural Guidelines. The Architectural Guidelines provide for the installation and maintenance of a minimum number of trees of a certain size in the front yard of each Lot. The permitted species of trees is set forth on Exhibit "C" attached hereto and made a part hereof for all purposes. Each Lot on which a residential dwelling is constructed shall have and maintain an underground water sprinkler system for the purpose of providing sufficient water to all front and side yards not enclosed by solid fencing. Subject to weather delay, each Lot shall be fully landscaped (which shall include the hydromulching of all front and side yards) within sixty (60) days from the date on which the residence thereon is "complete," as such term is defined in Section 3.27 hereof.

(a) Tree and Understory Preservation. Neither trees nor understory shall be removed unless the removal is necessary for the construction of the new buildings allowed by these covenants and approved in writing by the Architectural Control Committee. The developers and builders within the Subdivision shall preserve as many trees as possible.

3.21 Mailboxes, Trash Receptacles and Collection. Mailboxes shall be of a design and material listed in the Architectural Guidelines and shall be located as approved by the Architectural Control Committee. Each Lot Owner shall make or cause to be made appropriate arrangements with the Town of Prosper, Texas, for collection and removal of garbage and trash on a regular basis. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the Town of Prosper, Texas, and/or the Association, in connection with the storage and removal of trash and garbage. All trash, garbage, or waste matter shall be kept in tightly sealed bags or other approved containers which shall be maintained in a clean and sanitary condition. An Owner may place trash on the street curb abutting his Lot only on those days designated by the Town of Prosper, Texas, as trash collection days. On all other days, an Owner must keep all trash, garbage and other waste material hidden from public view. No Lot shall be used for open storage of any materials whatsoever, except that building materials to be used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon through completion of construction. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot. No portion of the Subdivision shall be used as a dumping ground for rubbish, trash, garbage or other waste.

3.22 Parking. On-street parking is restricted to approved deliveries, pick-up or short-term guests and short-term invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the Board of Directors. Parking in driveways is permitted. At least two (2) off-street parking spaces shall be provided on each Lot.

Trucks with tonnage in excess of one (1) ton and any vehicle with painted advertisement shall not be permitted to park overnight on the streets, driveways or otherwise in the Subdivision. No vehicle of any size which transports or contains flammable, explosive, or hazardous cargo shall be kept in the Subdivision overnight.

Any truck, bus, boat, boat trailer, trailer, horse trailer, mobile home, camper, mobile camper or any other vehicle other than conventional automobiles, SUV's and pickup trucks shall, if brought onto any portion of the Subdivision, be stored, placed or parked within the garage or accessory building of the appropriate Lot and concealed from view.

3.23 Temporary Structures and Vehicles. No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residence to be built thereon, shall be placed on any Lot. Any truck, bus, boat, boat trailer, trailer, mobile home, camp mobile, camper or any other vehicle other than conventional automobile shall, if brought within the Properties, be stored, placed or parked within the garage of the appropriate Owner and concealed from view. However, Declarant reserves the exclusive right to erect, place and maintain, and may in its sole discretion, permit builders to erect, place and maintain, such construction, sale and presale facilities and construction trailers upon the Properties as may be necessary or convenient in connection with construction, development and sale activities. Such facilities may include, without limitation, temporary construction or sales offices, storage areas and portable toilet facilities. Declarant and builders shall also have the temporary right to use a residence situated on a Lot as an office or model home in connection with construction and sales operations on the Properties. No garage, servant house, garage house or outbuilding on any Lot shall be occupied by an owner, tenant or anyone else prior to the erection of a dwelling house thereon.

Construction of only new buildings shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot.

3.24 Signs. No signs or flags shall be displayed to the public view on any Lot without the written approval of the Architectural Control Committee, with the following exceptions: (i) Declarant may erect and maintain a sign or signs deemed reasonable and necessary for the construction, development, operation, promotion and sale of the Lots; (ii) the patriotic display of flags not exceeding 4' x 6' in size shall be permitted on customary holidays; and (iii) an Owner may erect a sign of customary dimensions of not more than ten (10) square feet in order to advertise his Lot or home for sale or rent. Signs, marketing and advertising the Subdivision during the initial construction and sales period to third parties, are allowed, but shall be removed upon the sale of the final home.

3.25 Offensive Activities. No noxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance to the other Owners. Other than as herein provided, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs (other than pit bull dogs or pit terriers), cats or other household pets (not exceed three (3) adult animals) may be kept, provided that they are not kept, bred or maintained for commercial purposes. No horses, ponies, llamas, donkeys, or

other large animals or livestock may be raised, bred, or kept on any Lot; provided, however, two (2) or less horses or ponies may be kept on a Lot during daylight hours, but, in no event, shall any horse be kept, boarded, or stabled on any Lot overnight.

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

3.27 Duty of Construction. All construction on any Lot shall be completed no later than one (1) year following the commencement of construction. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set. For purposes hereof, construction shall be deemed completed when all plumbing fixtures are installed and operational; all cabinet work is completed and installed; all interior walls, ceilings, and doors are completed and installed; floors have been completed (with hardwood, carpet, tile or other similar floor covering installed); and the appropriate final finish has been applied to all surfaces within the structure, such as paint, wallpaper, paneling, stain or the like. In the event of destruction (total or partial) to the improvements on any individual Lot due to fire or any other cause, the Owner of such Lot covenants and agrees to complete all necessary repairs or reconstruction of the damaged improvements within one (1) year, and/or remove all remaining improvements within six (6) months, following the date that the damage occurs.

3.28 Maintenance of Lots and Improvements.

(a) Owners and occupants (including lessees) of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep such Lot and all buildings, improvements, grounds or drainage easements thereon or other rights-of-way incident thereto, and all vacant land thereon, in a well-maintained, clean and attractive condition at all times. Such maintenance shall include, but shall not be limited to, the following:

- (i) Prompt mowing of weeds, grass or other unsightly growth on vacant Lots;
- (ii) Prompt removal of all litter, trash, refuse and waste;
- (iii) Lawn mowing, on a regular basis;
- (iv) Tree and shrub pruning;
- (v) Watering landscaped areas;
- (vi) Keeping exterior lighting in working order;

(vii) Keeping lawn and garden areas alive, free of weeds, and attractive;

(viii) Keeping parking areas and driveways in good repair;

(ix) Complying with all government health and police requirements;

(x) Repairing of improvements;

(xi) Cleaning and maintaining of landscaped areas lying between street curbs and Lot lines, unless such streets or landscaped areas are expressly designated to be maintained by applicable governmental authorities or the Association;

(xii) Maintaining all exterior surfaces;

(xiii) Maintaining and repairing fences, walls and retaining walls; and

(xiv) Prompt removal of any ponding water on a Lot that contains or is adjacent to a completed residence.

(b) If, in the opinion of the Board of Directors, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the repairs and maintenance or make arrangements with the Association for making the repairs and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such repair and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner of any Lot on which such work is performed shall jointly and severally be liable for the cost of such work [such costs constituting a Special Assessment as specified in Section 7.5(b) hereof] and shall promptly reimburse the Association for such cost, including a reasonable charge for administrative costs attributable thereto.

3.29 Maintenance of Common Properties. The land identified as Flood Plain, if any, on the Plat (whether owned by Declarant, the Association, or the Town of Prosper) and used as the community unit development contribution shall be held as undisturbed permanent open space. No improvements shall be made to the flood plain except at the direction of the Town of Prosper and then only for the protection of the health, safety and welfare of the Land.

3.30 Exterior Lighting. No exterior lighting on any tennis court shall be allowed within the Subdivision. Declarant shall petition the Town of Prosper for the installation of low level lighting fixtures for the street located within the Subdivision and shall use its reasonable efforts to obtain the approval of such petition. Lighting on the exterior of the houses in the Subdivision shall be approved by the Architectural Control Committee and may not cause glare or disruption on any property in or adjacent to the Subdivision.

ARTICLE IV PROPERTY RIGHTS IN COMMON PROPERTIES

4.1 Title to the Common Properties. The Declarant shall dedicate and convey the fee simple title to the Common Properties to the Association prior to or upon completion of Declarant's initial construction of the Common Improvements.

4.2 Owner's Easement of Enjoyment. Subject to the provisions of Section 4.3 of this Article, every Owner and every tenant of every Owner, who resides on a Lot, and each individual who resides with either of them, respectively, on such Lot shall have a right and easement of use and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title of every Lot; provided, however, such easement shall not give such person the right to make alterations, additions or improvements to the Common Properties.

4.3 Extent of Owners' Rights and Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to adopt, amend, enforce and revoke rules and regulations governing the use, operation and maintenance of the Common Properties including, without limitation, the authority to assess fines against Owners violating such rules and regulations. The Association is further authorized and empowered to prohibit the use, or to limit the manner and extent of use, of the Common Properties by Owners owing unpaid fines or Assessments or violating rules and regulations of the Association.

(b) The right of the Association to enter into and execute contracts with third parties (including the Declarant, or an affiliate of the Declarant) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association;

(c) The right of the Association, subject to the written approval of Member(s) having a majority of the outstanding votes of the Association, in the aggregate, regardless of class, to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility company for such purposes and upon such conditions as may be approved by such Members; and

(d) The right of the public to the use and enjoyment of public rights-of-way, if any, located within the Common Properties.

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

4.5 Damage to the Common Properties. Each Owner shall be liable to the Association for all damage, other than ordinary wear and tear, to the Common Properties caused by the Owner or such Owner's family, pets, tenants or other occupants of such Owner's Lot. The Common Properties may be subject to storm water overflow, natural bank erosion and other natural or man-made events or occurrences which cannot be defined or controlled. Under no circumstances shall Declarant or the Association ever be liable, and each person hereafter becoming an Owner hereby waives any right to recovery from Declarant or the Association, for any damages or injuries of any kind or character or nature whatsoever resulting from: (i) the occurrence of any natural phenomena; (ii) the failure or defect of any structure or structures situated on or within the Common Properties, including failures or defects occurring through the negligence of contractors employed by Declarant or the Association; and (iii) any negligent or willful act, conduct, omission or behavior of any individual, group of individuals, entity or enterprise occurring on, within or related to the Common Properties.

ARTICLE V EASEMENTS

5.1 Emergency and Public Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles and other public service vehicles and personnel to enter upon the Common Properties, in the performance of their duties. In addition, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter the Common Properties to render any service.

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

5.3 Easements for Drainage. Drainage facilities and easements for the installation and maintenance of utilities are reserved as shown on this Plat.

**ARTICLE VI
HOMEOWNERS ASSOCIATION**

6.1 Purposes. The Association shall have the duty and responsibility to administer and maintain the Common Properties, to establish and collect Assessments and to disburse collected funds as so permitted, and to enforce this Declaration. The Association may also be responsible for the maintenance and repair of the bar ditches in the Subdivision and some or all of the trails and lakes shown on the Plat, even if such trails or lakes are owned by the Town of Prosper, until such time as such maintenance and repair are assumed by the Town of Prosper.

6.2 Membership. Every Owner shall automatically be a Member of the Association.

6.3 Classes of Membership. The Association shall have two classes of voting membership:

CLASS A. Class A Members shall be all Owners who are not Class B Members. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot.

CLASS B. Class B Members shall be Declarant and building companies selling homes to third parties. Declarant shall be entitled to six (6) votes for each Lot owned by a Class B Member. Class B Members shall be voting Members. The Class B membership shall cease, and each Class B Member shall become a Class A Member, on the first to occur of (i) the date on which the total number of votes outstanding in the Class A membership is greater than the total number of votes outstanding in the Class B membership; or (ii) the date that is the tenth (10th) anniversary of the date of this Declaration.

6.4 Administration and Maintenance of the Common Properties. The Association shall take the actions required to care for and preserve the Common Properties.

6.5 Assessments, Borrowing, Reserve Funds. The Board of Directors shall administer the Assessment process described in Article VII hereof. Upon prior approval of 70% of the Class A Members and 70% of the Class B Members, the Board of Directors may, on behalf of the Association, borrow funds on a secured or unsecured basis and, if secured, the security may consist of the assignment of current or future Assessments or the pledge of rights against delinquent Owners; provided, however, that the Association shall not have the power to mortgage the Common Properties. The Board of Directors may establish reserve funds from Assessments or borrowing for the purpose of accumulating funds to pay the cost of repairing, refurbishing and replacing any Common Properties, including the Streets. Reserve funds shall be accounted for separately from other funds.

6.6 Disbursement of Association Funds. The Board of Directors shall have the exclusive right to authorize the Association to contract for all goods, services, and insurance and to hold and disburse Association funds in payment therefore.

6.7 Declaration Enforcement. If, as and when the Board of Directors, in its sole discretion, deems necessary, it may cause the Association to take action to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation thereof.

6.8 Liability Limitations. Neither any Member nor the Board of Directors (or any of them) nor the officers (if any) of the Association nor Declarant shall be personally liable for debts contracted for or otherwise incurred by the Association or for the negligence, willful misconduct or other tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither the Declarant nor the Association, its directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same.

ARTICLE VII ASSESSMENTS

7.1 Creation of the Lien and Personal Obligation of Assessments. For each Lot owned by each Owner, such Owner shall be deemed to covenant and agree to pay to the Association (or to an entity or collection agency designated by the Association): (1) all annual maintenance assessments or charges ("Maintenance Assessments") assessed against his Lot or Lots, which assessments shall be on a calendar year basis; (2) all special assessments for capital improvements ("Capital Assessments") assessed against his Lot or Lots, such assessments to be fixed, established and collected from time to time as herein provided; (3) all individual special assessments ("Special Assessments") levied against such Owner to reimburse the Association for the costs for maintenance and/or repairs to Common Properties caused by the willful or negligent acts of the individual Owner or his invitee and for maintenance or repair to the Owner's Lot or improvements thereon in accordance with Section 3.28 hereof. Such assessments shall be fixed, established and collected from time to time as herein provided. The Maintenance, Capital and Special Assessments (in general "Assessments"), together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge and a continuing lien upon each Lot against which each such Assessment is made. Each such Assessment together with interest thereon and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of each person who was an Owner of such Lot at the time when the Assessment became due.

7.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the health and welfare of the residents of the Lots, including in particular for the maintenance of the Common Properties and improvements thereto

and for their management and supervision and for carrying out the duties of the Association or the Board of Directors as set forth in this Declaration or in the articles of incorporation or bylaws of the Association.

7.3 Initial Improvements and Maintenance of the Common Properties. Initially, all improvement of the Common Properties shall be the responsibility of the Declarant and shall be undertaken by Declarant at its sole cost and expense with no right to reimbursement from the Association. The exact nature of improvement to the Common Properties shall be within the sole discretion of the Declarant. Following the conveyance of the Common Properties to the Association, the responsibility for maintenance, repair, and replacement of the Common Properties shall automatically be assumed by the Association, and Declarant's responsibility therefore shall be limited to that described in Section 7.4 below.

7.4 Basis and Amount of Maintenance Assessments.

(a) At each annual meeting, the Board of Directors shall set the amount of the Maintenance Assessment that may be levied against each Lot for the succeeding year, provided that for any year, the maximum Maintenance Assessment for such year may not be increased more than ten percent (10%) above the Maintenance Assessment for the immediately preceding year unless otherwise approved by a majority of the votes of the Class A Members and a majority of the votes of the Class B Members. If in any year the Board of Directors fails to set a Maintenance Assessment for such year, the Maintenance Assessment shall be deemed to be the same as the Maintenance Assessment for the preceding year.

(b) When the Maintenance Assessment is computed for Lots, all or a portion of such Maintenance Assessment shall be payable to the Association by the Member according to the status of such Member as follows:

(i) When the Lot is owned by a Class A Member the full Maintenance Assessment shall be payable upon inception of construction activities on the Lot. Prior to this inception, one-half (½) of the Maintenance Assessment shall be payable.

(ii) When the Lot is owned by a Class B Member one-half (½) of the Maintenance Assessment shall be payable.

(c) Notwithstanding anything herein contained to the contrary, the first Maintenance Assessment shall be made _____, 20____. The full Maintenance Assessment chargeable against any Lot for which a full Maintenance Assessment is payable shall not exceed \$_____ per month unless approved by a majority of the votes of the then existing Class A Members and by a majority of the votes for the then existing Class B Members. The Declarant may, in its discretion, provide amounts in excess of the funds raised by the

Maintenance Assessments in order to maintain the Common Properties within reasonable standards. If, in any year, Declarant advances funds for maintenance in excess of the Maintenance Assessment, such excess shall be a debt of the Association to Declarant payable only out of any Maintenance Assessments received by the Association, to the extent such receipts are in excess of the Association's current requirements.

(d) Written notice of the Maintenance Assessment to be paid by each Member shall be sent to every Member, but for Lots having more than one Owner, only one Member for such Lot shall be entitled to notice. The Member to whom notice shall be sent shall be as requested in writing by the Owners of such Lot, and in the event of conflicting or uncertain instruction, the recipient of such notices shall be determined by the Association.

7.5 Capital Assessments and Special Assessments.

(a) The Association may levy in any assessment year a Capital Assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Properties or Common Properties, including the necessary fixtures and personal property related thereto; provided that if the total amount of the Capital Assessment against all of the Lots would exceed \$1,000 in the aggregate, such Capital Assessment shall be made only after it has received the affirmative approval of a majority of the votes of the Class A Members and a majority of the votes of the Class B Members.

(b) Upon an affirmative vote of a majority of the members of the Board of Directors of the Association, the Association may levy Special Assessments against individual Owners for reimbursement for maintenance or repairs occasioned by the willful or negligent acts of such individual Owners or their invitees (and not ordinary wear and tear and for maintenance or repair to the Owner's Lot or improvements thereon) in accordance with Section 3.28(b) hereof.

7.6 Uniform Maintenance and Special Capital Assessments. Except as otherwise provided in Section 7.4(b), Maintenance Assessments and Capital Assessments must be fixed at a uniform amount for all Lots.

7.7 Date of Commencement of Assessments; Due Date. The Board of Directors may, from time to time, establish the date that particular Assessments provided for herein shall be payable and may provide for payment of Assessments in monthly, quarterly, semi-annual or annual installments.

7.8 Effect of Non-Payment of Assessments: The Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If any Assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot of the non-paying Owner which shall bind such Lot, and shall be a personal obligation of the Owner of such Lot and his heirs, executors, devisees and personal representatives. The Association shall have the right to reject partial payments of an Assessment and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such Assessment, however, shall remain his personal obligation and shall not be a personal obligation of his successors in title unless expressly assumed by them. However, the lien for unpaid Assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. By accepting a deed or other conveyance to a Lot or Lots every person or entity hereafter acquiring any interest in such Lot or Lots shall be deemed to have covenanted and agreed to pay the Assessments provided for herein in the same manner as if the covenant and agreement to pay was expressly set forth in such deed or other conveyance, without regard to whether such covenant and agreement shall actually be so expressed in any such deed or other conveyance. No Owner may waive or otherwise escape personal liability for the Assessments provided herein by non-use of the Common Properties or abandonment of his Lot.

(b) The Association may give written notification to the holder(s) of the mortgage on the Lot of the non-paying Owner of such Owner's failure to pay any Assessment when such payment has not been received within ten (10) days after the date such Assessment was due.

(c) If any Assessment or part thereof is not paid when due, the unpaid amount of such assessment shall bear interest from the due date at a rate equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the highest non-usurious rate of interest permitted by applicable law, and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the property subject thereto, and there shall be added to the amount of such unpaid Assessment any and all costs of collection incurred by the Association, including reasonable attorneys' fees.

(d) Without limiting the other remedies available to the Association hereunder, for the purpose of further securing the payment and performance of each Owner's obligations hereunder, by accepting title to a Lot, the Owner thereof shall be deemed to have granted to the Association a contract lien covering such Lot, together with the right to appoint and remove a trustee and any number of substitute trustees and to cause the trustee or substitute trustee to

foreclose the Association's lien against such Lot pursuant to a non-judicial foreclosure conducted in accordance with the provisions of Section 51.002 of the Texas Property Code.

(e) In addition to the other remedies available to the Association under this Section 7.8, the Association shall have the authority to exercise all of the remedies contemplated by other sections of this Declaration against Owners that fail to pay Assessments in a timely manner.

7.9 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate and inferior to the lien of any bona fide first lien mortgage or deed of trust now or hereafter placed upon the Lots subject to Assessment; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a foreclosure of such lien pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve such Lots or the purchaser thereof from liability for the amount of any Assessments thereafter becoming due nor from the lien of any such subsequent Assessment. Upon request by an Owner, the Board of Directors, shall consider and may in its sole discretion, approve or disapprove the subordination of the lien of this Declaration to liens other than first lien mortgages or deeds of trust.

7.10 Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:

- (i) All properties dedicated and accepted by the local public authority and devoted to public use.
- (ii) All Common Properties.

ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

8.1 Architectural Control Committee. The Architectural Control Committee, hereinafter sometimes called the "Committee," shall be composed of three (3) individuals selected and appointed by Declarant, if at the time of appointment, Declarant owns one or more Lots and shall be selected and appointed by the Board of Directors, if at the time of appointment, Declarant does not own any Lots. The Committee shall function as the representative of Declarant during the time Declarant owns one or more Lots and shall function as the representative of the Association from and after the time Declarant owns no Lots. The Committee shall exist and act for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of the residential development. Any one or more of the members of the Committee may be removed from the Committee, with or without cause, by the Declarant, if at the time of removal, Declarant owns one or more Lots or by the Board of Directors, if at the time of removal, Declarant does not own any Lots.

A majority of the Committee may designate a member to act for it. No member of the Committee shall be entitled to any compensation for services performed hereunder nor be liable for claims, causes, causes of action or damages (except where occasioned by gross negligence or willful misconduct) arising out of services performed pursuant to this Declaration. At any time, the Declarant may delegate and assign to the Board of Directors any of Declarant's rights in respect to the Committee. Such action by the Declarant shall be effective upon recordation of a written instrument properly reflecting the same.

8.2 Architectural Approval.

(a) Architectural Guidelines. The Committee shall, from time to time, publish and promulgate Architectural Guidelines (herein so called) which shall supplement the covenants and restrictions set forth in this Declaration and are incorporated herein by reference. The Committee shall have the right from time to time to amend the Architectural Guidelines, provided such guidelines, as amended shall be in keeping with the overall quality, general architectural style and design of the community. The Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of those matters for which it is responsible in accordance with these Covenants and Restrictions. The Committee shall endeavor to promulgate the Architectural Guidelines in such a manner that only materials complying with all applicable laws and regulations are specified therein, but each Owner of a Lot (and not the Committee) is responsible for complying with such laws and regulations on his respective Lot. If the Committee should be advised that materials specified by the Architectural Guidelines do not comply with applicable laws or regulations, the Committee shall use reasonable efforts to inquire into the nature of the non-compliance and to make appropriate revisions of the Architectural Guidelines.

PRIOR TO ACQUIRING ANY LOT OR CONSTRUCTING ANY STRUCTURE ON A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE, AND/OR OWNER IS STRONGLY ENCOURAGED TO CONTACT THE ARCHITECTURAL CONTROL COMMITTEE TO OBTAIN AND REVIEW THE MOST RECENT ARCHITECTURAL STANDARDS BULLETINS AND DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION, LANDSCAPE AND USE OF THE LOT AND THE STRUCTURES TO BE CONSTRUCTED THEREON.

THE ARCHITECTURAL STANDARDS BULLETINS AND DESIGN GUIDELINES MAY CONTAIN STANDARDS, REQUIREMENTS, OR LIMITATIONS IN ADDITION TO THOSE EXPRESSLY SET FORTH OR REFERRED TO IN THIS DECLARATION AND MORE STRINGENT STANDARDS, REQUIREMENTS, OR LIMITATIONS THAN THE SPECIFIC STANDARDS, REQUIREMENTS OR LIMITATIONS SET FORTH OR REFERRED TO IN THIS DECLARATION.

(b) Required Approval. No building, structure, paving, pool, fencing, hot tub, or improvement of any nature shall be erected, placed or altered on any Lot until the site plan showing the location of such building, structure, driveway, paving or improvement, construction plans and specifications thereof and landscaping and grading plans therefore have been submitted to and approved in writing by the Committee as to: (I) location with respect to Lot lines, setback lines and finished grades with respect to existing topography, (ii) conformity and harmony of external design, color, and texture with existing structures and existing landscaping, (iii) quality of materials; adequacy of site dimensions; proper facing of main elevation with respect to nearby streets; and (iv) the other standards set forth within this Declaration or the Architectural Guidelines. The Committee is authorized to request the submission of samples of proposed construction materials or colors or proposed exterior surfaces.

(c) Procedure. Final plans and specifications shall be submitted to the Committee by the Owner for approval or disapproval. If such plans and specifications meet the approval of the Committee, the plans and specifications will be retained by the Committee and a letter approving the plans and specifications returned to the Owner. If such plans and specifications do not meet the approval of the Committee, the plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of the reasons for such disapproval. Any modification or change to the approved set of plans and specifications or to construction or reconstruction pursuant thereto which materially affects items (I) through (iv) of the preceding paragraph must again be submitted to the Committee, for its review and approval. The Committee's approval or disapproval as required herein shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within twenty (20) days after they have submitted to it, then the Owner shall notify the Board of Directors of such failure. If the Committee thereafter fails to approve or disapprove such plans and specifications within ten (10) days after the Owner's notice is given to the Board of Directors, then Committee approval shall be presumed.

(d) Committee Discretion. The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction, construction of other improvements and location, quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the discretion of the Committee, adversely affect the living enjoyment of one or more Owner(s) or the value of the Properties. As an example, and not by way of limitation, the Committee may impose limits upon the location of window areas of one dwelling which would overlook the enclosed patio area or other area of an adjacent dwelling. Also, the Committee is permitted to consider technological advance in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the

reasonable opinion of the Committee. The action of the Committee with respect to any matter submitted to it shall be final and binding upon the Owner submitting such matter, subject to the provisions of Section 10.8 hereof.

(e) Common Improvements. Declarant shall not be required to obtain Committee approval of the initial Common Improvements.

8.3 Variances. Upon submission of a written request for same, the Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install improvements which are in variance from the Architectural Guidelines. In any such case, variances shall be in basic conformity with and shall blend effectively with the overall quality, general architectural style and design of the community. No member of the Committee shall be liable to any Owner for any claims, cause of action, or damages arising out of the grant of, or the refusal to grant, any variance to an Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the granting of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce this Declaration against any other Owner.

8.4 Nonconforming and Unapproved Improvements. The Board of Directors may require any Owner to restore such Owner's improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements were commenced or constructed in violation of this Declaration, including the Architectural Guidelines. In addition, the Board of Directors may, in its sole discretion, cause the Association to carry out such restoration, demolition and removal if the Owner fails to do so. The Board of Directors may levy the amount of the cost of such restoration, demolition and removal as a Special Assessment against the Lot upon which such improvements were commenced or constructed and shall have all the rights and remedies to enforce collection thereof provided by law and by this Declaration. Dwellings or other improvements initially constructed in accordance with this Declaration and having received any necessary approval of the Architectural Control Committee in connection with their initial construction, may be repaired, maintained and restored in accordance with the standards in force at the time of their initial construction, notwithstanding any subsequent amendment or revision of this Declaration or the Architectural Guidelines. If such dwellings or other improvements are totally destroyed or totally replaced, the new dwellings or other new improvements must conform to the requirements of this Declaration and the Architectural Guidelines in force at the time of their construction.

8.5 Foundation Form Survey. After setting forms for the pouring of concrete for any foundation on a Lot, but before pouring any concrete for such foundation or otherwise proceeding with construction of such foundation, each Owner shall cause a foundation form survey to be prepared by a licensed surveyor and submitted to the Committee for its records. The foundation form survey shall depict the location of the foundation form in relation to all Lot lines, setback lines and easement lines affecting such Lot. If the foundation form survey reflects the violation of any Lot or setback line or any violation of this Declaration, the Owner shall cause the violation to be cured before performing any further work on the Lot. No Owner shall

proceed further with construction until the foundation form survey has been approved. If an Owner fails to obtain a foundation form survey before constructing improvements on a Lot, the improvements shall be deemed unapproved improvements and the provisions of Section 8.4 hereof shall apply to such improvements. Without limited any other rights or remedies available under this Declaration with respect to such Owner and Lot, the Board of Directors shall have the right to cause an appropriate survey (the "Substitute Survey") of the Lot and the improvements thereon to be made and shall have the right to recover from the Owner of such Lot its expenses incurred in obtaining the Substitute Survey in accordance with the provisions of Section 7.5(b) hereof. If the Substitute Survey reflects violations of any Lot line or setback line or any violation of this Declaration, the Board of Directors shall have all of the rights provided in Section 8.4 hereof to cause the violation to be corrected, including the right to require the demolition and removal of the unapproved improvements. If an Owner fails to comply with the provisions of this Section 8.5, any failure on the part of the Board of Directors to promptly obtain a Substitute Survey or to promptly require the demolition or removal of the unimproved improvements shall not result in a waiver or diminution of the rights of the Board of Directors hereunder or give rise to any claim or defense in favor of the Owner of the unimproved improvements.

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

ARTICLE IX PRIVATE STREETS

9.1. NOTICE TO OWNERS OF LOTS. The streets within the Properties are private streets that have not been dedicated to and are not owned by the City of Prosper,

Texas. Accordingly, the City of Prosper has no responsibility to maintain the streets within the Properties. The Association has the sole responsibility for street maintenance and the cost thereof.

9.2. Private Streets. The following provisions are applicable to the streets (the "Streets") within the Properties:

(a) The Association will own the Streets; provided, however, neither Declarant nor the Association makes any commitment that the Streets always will be private streets. Changes in ordinances of the City of Prosper (the "City") or other City action could cause the Streets to no longer be private.

(b) The Association shall, and has the sole responsibility to, maintain the Streets and make any repairs to the Streets. The Association's costs of maintaining the Streets will be collected from the Owners of the Lots through assessments as provided in the Declaration.

(c) The Association will establish and maintain a maintenance reserve fund to pay future maintenance and repair costs of the Streets, also to be collected from the Owners of the Lots through Assessments.

(d) The Association will dedicate to the City, for so long as the Streets are private, an easement to enter onto and use the Streets for the provision of police and fire protection, garbage collection, inspection and code enforcement, and for any other purpose relating to the exercise of a governmental service or function and to remove any vehicle or obstacle from the Streets that impairs emergency access.

9.3. Limited Access. Declarant or the Association may install a system that limits vehicular access to the Streets from public streets (the "System"). By accepting a deed to a Lot, each Owner of a Lot acknowledges the following:

(a) The Association will have the sole authority, in its discretion, to determine when the System will become operational.

(b) Neither Declarant nor the Association is responsible for providing security to the Owners of the Lots or their family members, guests, invitees, or property. The purpose of the System will be to provide some degree of restriction of vehicular access onto the Streets. However, there is absolutely no guarantee that the presence of the System will in any way increase the personal security or safety of any Owner of a Lot or their family members, guests, invitees, or property. Each Owner's personal and property security is his own responsibility.

(c) The City will have access to the Property for law enforcement purposes. Each Owner must look to the City for the provision of law enforcement and police protection; however, the City police may not make routine patrols, enforce traffic or parking ordinances, or prepare accident reports in the Property.

(d) The System is not intended to replace or to serve in lieu of individual alarm systems or other measures to provide security at a residence. Each Owner of a Lot is encouraged to install his own personal security devices on his property to the same extent that it would be prudent if the System did not exist.

(e) The System will be installed based upon the representations of vendors regarding the operational and performance capabilities of the components of the System. Declarant and the Association disclaim all and makes no warranties of any nature regarding the System, including, without limitation, any implied warranty of merchantability or fitness for the purpose for which it was designed. Neither Declarant nor the Association expressly or impliedly guarantee that the System will avert or prevent occurrences or consequences which the System is designed to avert or prevent.

(f) The System shall be owned by the Association. Operation of the System shall be the responsibility of the Association. Declarant shall not be required to operate or maintain the System. Costs of operation and maintenance of the System will be paid by the Owners of the Lots through assessments.

(g) Each residence constructed on a Lot must be connected into the System, and each Owner of a Lot is responsible for using the System in the proper manner.

ARTICLE X GENERAL PROVISIONS

10.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the Land, and shall inure to the benefit of and be enforceable by Declarant, the Association and each Owner and each of their respective legal representatives, heirs, successors and assigns. This Declaration shall be effective for an initial term of fifty (50) years from the date that this Declaration is recorded in the Real Property Records of Collin County, Texas, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of ten (10) years unless, at least one (1) year prior to the expiration of the then current term, an instrument terminating this Declaration is signed by Owners of at least seventy percent (70%) of the Lots, and is recorded in the Real Property Records of Collin County, Texas.

10.2 Amendments. Notwithstanding Section 10.1 of this Article, this Declaration may be amended and/or changed upon the express written consent of at least seventy percent (70%) of the outstanding votes of each class of Members of the Association. Any and all amendments of this Declaration shall be recorded in the Real Property Records of Collin County, Texas.

10.3 Enforcement. The covenants and restrictions of this Declaration may be enforced against any person or persons violating or attempting to violate them, by any proceeding at law or in equity, including, without limitation, through actions to enjoin violations, to recover damages, or to enforce any lien created by this Declaration. The failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.4 Severability. If any provision of this Declaration is determined by judgment or court order to be invalid, or illegal or unenforceable, the remaining provisions of this Declaration shall remain in full force and effect in the same manner as if such invalid, illegal or unenforceable provision had been deleted from this Declaration by an amendment effective as of the date of such determination.

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

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

10.7 Notices to Mortgagees. Upon written request delivered to the Association by the mortgagee of a Lot, the Association shall send to the requesting mortgagee written notification of any default hereunder affecting the mortgagor or the Lot covered by the mortgage of the requesting mortgagee. Any such request shall be in sufficient detail to enable the Association to determine the affected Lot and Owner and shall set forth the mailing address of the requesting mortgagee.

10.8 Disputes. Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws or the Architectural Guidelines, shall be determined by the Declarant, if at the time of the determination Declarant continues to have authority to appoint members of the Architectural Control Committee, and shall be determined by the Board of Directors, if at the time of determination the Board of Directors has the right to appoint the members of the Architectural Control Committee. The determination of Declarant or the Board of Directors, as the case may be, shall be final and binding upon all Owners.

10.9 Termination of and Responsibility of Declarant. If Declarant shall transfer all of its then remaining right, title and interest in and to the Land and shall additionally expressly assign all its rights, benefits and obligations as Declarant hereunder to the transferee of such remaining interest in the Land, then Declarant shall have no further rights or duties hereunder and such rights and duties of Declarant hereunder shall thereupon be enforceable and performable by such transferee of Declarant's rights hereunder.

IN WITNESS WHEREOF, Declarant, Mooreland, Savoy, and Southern have caused this Declaration to be executed as of the 1 day of April, 2008.

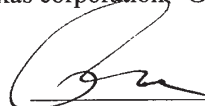
2002 TUSCANY PARTNERS, L.P.,
a Texas Limited Partnership

By: 2002 TUSCANY HOLDINGS, LLC,
a Texas limited liability company
- General Partner

By: 
Richard B. Platt, President


MOORELAND CASTLEMARK HOMES, LP,
a Texas limited partnership

By: MARKSBURG HOMES GP, INC.,
a Texas corporation - General Partner

By: 
Michael G. Beaty, President

Dennis J. Savoy

SOUTHERN KRAFT HOMES, LP,
a Texas limited partnership

By: 
Name: STEVE SPARKS
Title: OWNER

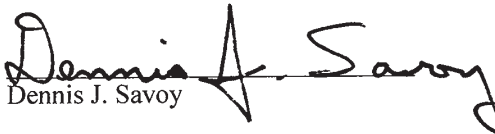
10.9 Termination of and Responsibility of Declarant. If Declarant shall transfer all of its then remaining right, title and interest in and to the Land and shall additionally expressly assign all its rights, benefits and obligations as Declarant hereunder to the transferee of such remaining interest in the Land, then Declarant shall have no further rights or duties hereunder and such rights and duties of Declarant hereunder shall thereupon be enforceable and performable by such transferee of Declarant's rights hereunder.

IN WITNESS WHEREOF, Declarant, Savoy, and Southern have caused this Declaration to be executed as of the _____ day of _____, 2008.

2002 TUSCANY PARTNERS, L.P.,
a Texas Limited Partnership

By: 2002 TUSCANY HOLDINGS, LLC,
a Texas limited liability company
- General Partner

By: _____
Richard B. Platt, President


Dennis J. Savoy

SOUTHERN KRAFT HOMES, LP,
a Texas limited partnership

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

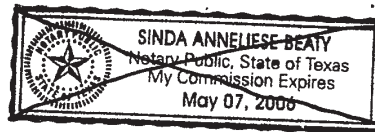
This instrument was acknowledged before me on April 1, 2008, by RICHARD B. PLATT, President of 2002 TUSCANY HOLDINGS, LLC, a Texas limited liability company and the General Partner of 2002 TUSCANY PARTNERS, L.P., a Texas limited partnership, on behalf of said entities.

BEid
Notary Public, State of Texas

My Commission Expires:

6.25.2011

Beau Eidson
(Printed or Typed Name of Notary)



STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on April 1, 2008, by MICHAEL G. BEATY, President of MARKSBURG HOMES GP, INC., a Texas corporation and general partner of MOORELAND CASTLEMARK HOMES, LP, a Texas limited partnership, on behalf of said entities.

BEid
Notary Public, State of Texas

My Commission Expires:

6.25.2011

Beau Eidson
(Printed or Typed Name of Notary)



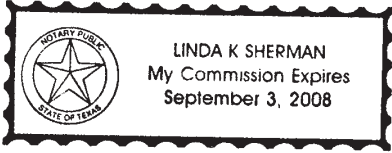
STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on _____, 2008, by RICHARD B. PLATT, President of 2002 TUSCANY HOLDINGS, LLC, a Texas limited liability company and the General Partner of 2002 TUSCANY PARTNERS, L.P., a Texas limited partnership, on behalf of said entities.

My Commission Expires: _____
Notary Public, State of Texas

(Printed or Typed Name of Notary)

STATE OF TEXAS §
 §
COUNTY OF COLLIN §



This instrument was acknowledged before me on 4-17, 2008, by DENNIS J. SAVOY.

My Commission Expires: 9.3.08

Notary Public, State of Texas
Linda K. Sherman
(Printed or Typed Name of Notary)

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on _____, 2008, by DENNIS J. SAVOY.

Notary Public, State of Texas

My Commission Expires:

(Printed or Typed Name of Notary)

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on April 12, 2008, by STEVE SPARKS, a general partner of SOUTHERN KRAFT HOMES, LP, a Texas limited partnership, on behalf of said partnership.



Notary Public, State of Texas

My Commission Expires:

PAUL HOLMES

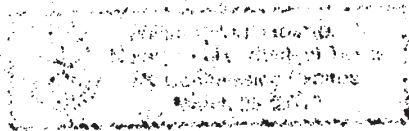
(Printed or Typed Name of Notary)



EXHIBIT "A"

(Land)

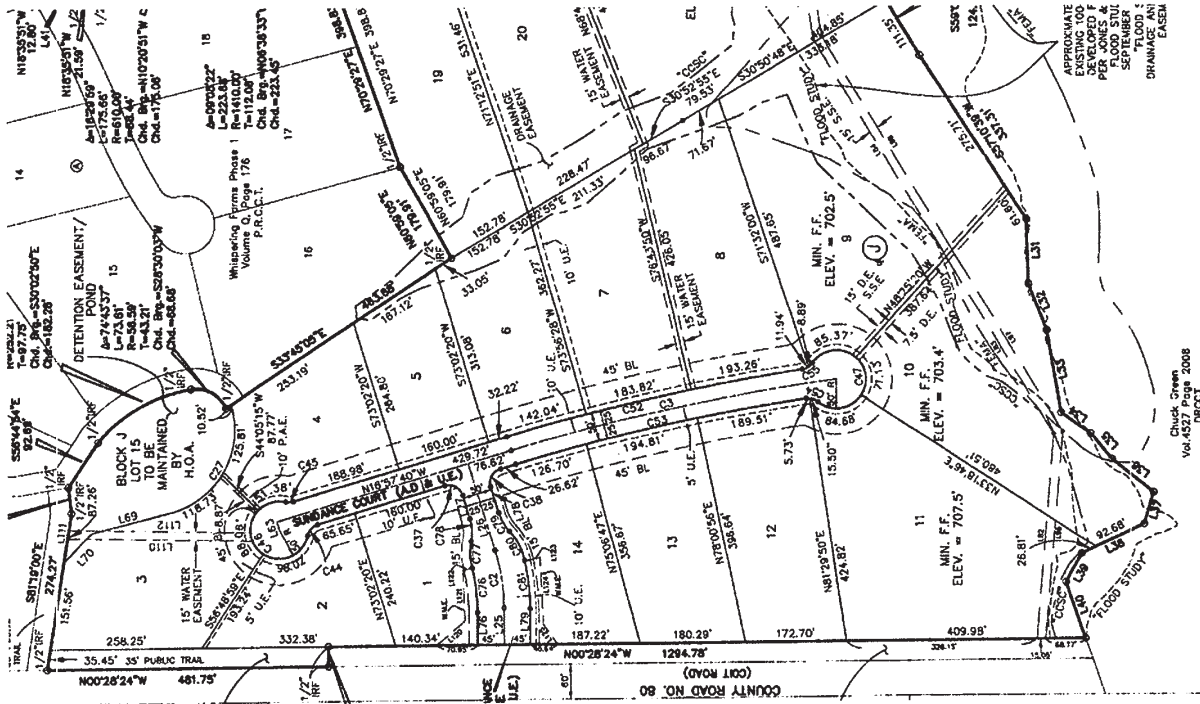
Lots 1 through 14, Block J of WHISPERING FARMS - PHASE 2,
an addition to the Town of Prosper, Collin County, Texas,
according to the plat thereof recorded under County Clerk's File
No. 2006-290, Plat Records of Collin County, Texas.



T:\TDHF\Files\BEATY\122\Enclave Decl.wpd

EXHIBIT "B"

(Setbacks)



Chuck Green
Vol. 4527 Page 2008
DROCT

EXHIBIT "C"

(Tree Species)

Live Oak
Red Oak
Cedar Elm
Bradford Pear

Filed and Recorded
Official Public Records
Stacey Kemp
Collin County, TEXAS
05/02/2008 02:26:17 PM
\$156.00 TKING
20080502000531900



A handwritten signature in cursive script, appearing to read "Stacey Kemp".

T:\TDH\Files\BEATY\122\Enclave Decl.wpd