

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR VISTA OAKS A SUBDIVISION IN HARRIS COUNTY, TEXAS**

THIS DECLARATION is made on the date hereinafter set forth by *CLEAR OAKS ENTERPRISES, INC.*, hereinafter referred to as " Declarant".

WITNESETH;

WHEREAS, Declarant is the owner of certain property in Pasadena, County of Harris, State of Texas, that has been platted and subdivided into a subdivision known as VISTA OAKS, according to the plat thereof recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Map Records of Harris County, Texas.

Declarant desires to develop this property as a residential subdivision subject to this Declaration and 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 this land for the development, improvement, sale, use, and enjoyment of the Property as a residential subdivision for the benefit of each Owner of any part of this land. The land subject to this Declaration is referred to as the "Property".

The Property shall include all the Lots and Reserves shown on the plat of the Vista Oaks, Subdivision referred to above.

All Reserves subject to this Declaration are, however, specifically excepted from Article IX, Restrictions of Use.

It has been deemed desirable, for the efficient preservation of values and amenities in the Property, to create an Association to which shall be delegated and assigned the powers of administering and enforcing the provisions of this Declaration including levying, collecting, and disbursing the assessments.

To exercise these functions, the Vista Oaks Community Association, Inc., a non-profit corporation created under the laws of the State of Texas, has been incorporated. The directors of the Association have established Bylaws by which the Association shall be governed.

Declarant 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 of this Declaration, all of which are adopted for and placed upon the Property, and shall run with the property and be binding on all parties who now or hereafter have or claim any right, title, or interest in the Property or any part of the Property, and on the heirs, executors, administrators, successors, and assigns of such parties, 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 party of the Property.

## ARTICLE I

### DEFINITIONS

**Section 1.** "Association" shall mean and refer to Vista Oaks Community Association, Inc. a non-profit corporation incorporated under the laws of the State and its successors and assigns.

**Section 2.** "Board" shall mean and refer to the duly elected Board of Directors of the Association.

**Section 3.** "Builder" shall mean and refer to a department of Declarant or any other entity to which Declarant conveys or transfers Lots, for the purpose of constructing homes or other permitted structures thereon.

**Section 4.** "Reserves" shall mean all real property owned by the Association for exclusive common use and enjoyment of the Owners, members of their families and guests, and for detention pond purposes.

**Section 5.** "Conveyance" shall mean and refer to conveyance of a fee simple title to the surface estate of a Lot, from one Owner to another.

**Section 6.** "Lot" shall mean and refer to any lots shown on the plat of Vista Oaks Subdivision upon which there will be constructed a single-family residence.

**Section 7.** "Declarant" shall mean and refer to CLEAR OAKS ENTERPRISES, INC., and its successors and assigns.

**Section 8.** "Declaration" shall mean and refer to this declaration of covenants, Conditions and Restrictions and any Amendments hereto applicable to the Property recorded in the Office of the County Clerk of Harris County, Texas.

**Section 9.** "Development Period" shall mean and refer to that period of time in which Declarant is the Owner of any Lot.

**Section 10.** "Member" shall mean and refer to those persons entitled to membership as provided in the Articles of Incorporation of the Association.

**Section 11.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to the surface estate in any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 12.** "Property" shall mean and refer to Vista Oaks, a subdivision in Harris County, Texas.

**Section 13.** "Transfer" shall mean and refer to the transfer of a Lot. One legal entity to whether or not the owner of record changes.

## ARTICLE II

### **RESERVATION, EXCEPTION, DEDICATIONS, AND CONDEMNATION**

**Section 1. Incorporation of Plat.** The subdivision plat of Vista Oaks dedicates for use as, such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such subdivision plat further establishes certain dedications, limitations, reservations and restrictions applicable to the Property. All dedications, limitations, restrictions, and reservations shown on the subdivision plat to the extent they apply to the property, are incorporated herein and made a part thereof as if fully set forth herein, and shall be construed as being adopted in each contract, deed and conveyance executed or to be executed by or on behalf of Declarant, conveying each Lot, within the Property.

**Section 2. Condemnation.** If all or any part of the Reserve area is taken or threatened to be taken by eminent domain or by power in the nature of imminent domain (whether permanent or temporary), the Association and each owner shall be entitled to participate in proceedings incident thereto at their respective expenses. The Association shall give timely written notice of the existence of such proceedings to all owners and to all first Mortgagees (as defined in Article X hereof) known to the Association to have an interest in any Lot. The expense of participation in such proceedings by the Association shall be borne by the Association and paid for out of assessments collected pursuant to Article V hereof. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association, in its discretion, deems necessary or advisable to aid or advise it in matters relating to such proceedings.

All damages or awards for such taking shall be deposited with the Association, and such damages or awards shall be applied as follows. If an action in eminent domain is brought to condemn a portion of the Reserves, the Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlements with respect thereof, or to convey such portion of the property to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking, all damage and awards shall be determined for such taking as a whole and not for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to the Association. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to replace or restore, as far as possible, the Reserve Areas so taken or damaged. In the event it is determined that such Reserve Areas should be replaced or restored by obtaining other land, this Declaration shall be duly amended by instrument executed by the Association on behalf of the Owners. If it is determined that the Reserve Area should not be replaced the Association shall pay the funds received as damages to the account of each Owner and First Mortgagee, if any, so their interests may appear.

## ARTICLE III

### PROPERTY RIGHTS

**Section 1. Owner's Easements of Enjoyment.** Every Lot Owner who resides on the Property shall have a right to an easement of enjoyment in and to the Reserve Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a)the right of the Association to grant or dedicate easements in, on, under or above the Reserve Areas or any part thereof to any public or governmental agency or authority or to any utility company for any service to the property or any part thereof;
- (b)the right of the Association to prevent an Owner from planting, placing, fixing, installing or constructing any vegetation, hedge, tree, shrub, fence, wall, structure, or improvement, or store any personal property on the Reserve Areas or any part thereof without prior written consent of the Association. The Association shall have the right to remove anything placed on the Reserve Areas in violation of the provisions of this subsection and to assess the cost of such removal against the owner responsible;
- (c)the right of Declarant (and its sales agents and representatives) to the nonexclusive use of the Reserve Areas and the facilities thereof, for display and exhibit purposes in connection with the sale of lots within the Property, which right Declarant hereby reserves provided, however, that such use shall not continue for a period of more than five (5) years after conveyance of the Reserve Areas within the property to the Association; provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise unreasonably restrict the Members in their use and enjoyment of the Reserve Areas;
- (d)the right of the Association to limit the number of guests of Owners utilizing the recreational facilities and improvements owned by the Association and provided upon Reserve Areas;

(e) the right of the Association to establish uniform rules and regulations and to charge reasonable admission and other fees pertaining to the use of any recreational facilities owned by the Association; and

(f) the right of the Association to suspend the voting rights of an Owner and the owner's right to use any recreational facility of the Association during the period the Owner is in default in excess of thirty (30) days in the payment of any maintenance charge assessment against a Lot, and to

suspend such rights for a period not to exceed sixty (60) days for any infraction of its published rules and regulations. The aforesaid rights of the Association shall not be exclusive but shall be cumulative of and in addition to all other rights and remedies which the Association may have by virtue of this Declaration or its by-laws or at law or in equity on account of such default or infraction.

**Section 2. Delegation of Use.** Owners subject to an easement of enjoyment in and to the Reserve Areas may delegate, in accordance with the By-laws, their right to or enjoyment of the Reserve Areas to members of their families, tenants, or contract purchasers who reside in Owners' residential dwelling.

**Section 3. Waiver of Use.** No Owner may be exempt from personal liability for assessments duly levied by the Association, nor release a Lot owned from the liens and charges hereof, by waiver of the use and enjoyment of the Reserve Areas thereon or by abandonment of Owner.

## ARTICLE IV

### MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** Each person or entity who is a record Owner of any of the Property which is subject to assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to any Owner and may not be separated from Ownership of the land which is subject to assessment by the Association.

**Section 2. Voting Classes.** The Association shall initially have two classes of voting membership:

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

**Class B.** The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned.

Class B membership shall cease and be converted to Class A membership on the earlier of the following dates:

- (a) the date on which the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the class B Membership: or
- (b) January 1, 2002.

## ARTICLE V

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Property, hereby covenants, and Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges; and
- (b) special assessments which are to be established and collected as hereinafter provided.

The regular and special assessments, together with interest, penalties, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing and contractual lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, penalty, costs and reasonable attorneys fee, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessment shall not pass to the Owner's successors in title unless expressly assumed by them.

**Section 2. Purposes of Assessment.** The assessment levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Members of the Association and for the improvement and maintenance of the Reserve Areas including the improvements and landscaping thereon.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot, to an Owner, the maximum annual assessment shall be \$150.00 per lot, and shall be paid at the time of conveyance. After pro-rating for the number of months left in the current year, any excess shall be credited to the following year's assessment.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner the maximum annual assessment may be increased each year above the maximum assessment for the previous year without a vote of the membership by five per cent.

(b) From and after January 1 of the year immediately following the conveyance of the First Lot to an Owner the maximum annual assessment may be increase above the rates specified in this Section 3, paragraph (a) - by a vote of two-thirds (2/3) of each class of Members entitled to vote in person or by proxy, at a meeting duly called for this purpose.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the costs for necessary purposes of the Association, such as the construction, reconstruction, repair or replacement of a capital improvement in the Reserve Areas, including fixtures and personal property related thereto, or for counsel, fees or the fees of other retained experts provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each class of Members entitled to vote in person or by proxy at a meeting duly called for this purpose.

**Section 5. Rate of Assessment.** Lots which are owned or transferred to Builder or which are occupied by residents shall each be subject to an annual assessment as determined by the Board of Directors pursuant to the terms of this Declaration. Lots which are owned by Declarant shall be assessed at the rate of one-fourth (1/4) of the annual assessment; however, said assessments shall be made only in the event and then only to the extent that assessments from lots owned by other than Declarant are not sufficient to meet the operating budget of the Association. Lots shall be assessed against a Builder when a Lot is made available for the improvement by said Builder and there is written confirmation, reservation, or conveyance of said Lot by Declarant in favor of Builder. As used in this Section 5, the term "Declarant" shall be construed to mean only CLEAR OAKS ENTEPRISES, INC., and his successors and assigns, acting in their capacity as land developers.

If there is a deficit in the annual operating budget of the Association for a given calendar year after assessment of Declarants Lots, and funds are not available to the Association from prior year budget surpluses, then Declarant shall contribute the funds necessary to cover the deficit. Declarant's obligation to fund these budget deficits as described herein above shall terminate on the date that Class B membership ceases, as described herein.

**Section 6. Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of a Lot to an Owner or a transfer of any Lot owned by Declarant to a builder. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to each Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessments on a specified Lot have been paid.

**Section 7. Effect of nonpayment of assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of the maximum lawful rate or twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot.

**Section 8. Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any First mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability of any assessments which thereafter become due or from the lien thereof.

**Section 9. Exempt Properties.** Any portion of the Property dedicated to **and** accepted by a local public authority, or owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to residential dwelling use shall be exempt from said assessment.

## ARTICLE VI

### ARCHITECTURAL CONTROL

**Section 1. Architectural Approval.** The overall plan for the development of the various areas and sections which make up Vista Oaks Subdivision contemplates centralization of architectural control to enhance, insure and protect the attractiveness, beauty and desirability of the area as a whole, while at the same time permitting compatible distinctiveness of individual development within the area. For this purpose, Declarant hereby reserves and retains the right of architectural control to itself or its assigns as hereinafter provided.

Declarant shall initially appoint an Architectural Control committee, consisting of not less than four (4) members, who need not be members of the Association, and who by majority vote may designate a representative to act for them. Any vacancy shall be filled by a successor appointed by the Declarant. Until such successor(s) shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, or specifications submitted to them or to designate a representative with like authority. Declarant retains the exclusive right to review and approve or disapprove all plans and specifications for original construction on the Property.

It is accordingly covenanted and agreed that no building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition to or change or alteration to such structure or the color thereof, (including, without limitation, site landscaping visible from any part of the Property and grading plans, patio covers and trellises, plans for off-street parking of vehicles and utility layout) be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.

In the event said Committee, or its designated representative, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been received by it, approval will not be required, and this article will be deemed to have been fully complied with.

All plans and specifications shall be submitted in writing over the signature of the Owner of the Lot or the Owner's authorized agent. The Architectural Control Committee shall have the right to require any Owner to remove or alter any structure which has not received approval or is built other than in accordance with the approved plans.

The requirement of this Article is in addition to any approvals or permits required by any appropriate governmental entity. Approval of plans as complying with the applicable Minimum Construction Standards adopted and promulgated from time to time for the Property by Declarant or its assigns, shall be only for such purposes and shall not serve as approval for any other purpose.

Declarant hereby reserves and retains the right at its option to assign its rights hereinabove set forth to an Architectural Control Committee appointed by the Association. In the event Declarant elects to assign such rights of approval, such assignment shall be evidenced by an instrument in writing and acknowledged by the proper officers of Declarant and placed of record in the appropriate records of the County Clerk of Harris County, Texas.

On the date that Class B Membership ceases, such rights shall automatically vest in the Association.

**Section 2. No Liability.** Neither Declarant, the Association, its Board of Directors, nor the Architectural Control Committee or the members thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any owner of a Lot affected by these restrictions by reason of mistake in judgement, 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 to the Architectural Control Committee for approval agrees by submission of such plans and specifications, and every Owner agrees, that no action or suit for damages will be brought against Declarant, the Association, its Board of Directors, the Architectural Control Committee, or any of the members thereof.

**Section 3. Notice of Noncompliance or Noncompletion.** Notwithstanding anything to the contrary contained herein, after the expiration of one (1) year from the date of issuance of a building permit by municipal or other governmental authority for any improvement, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of this Article VI unless actual notice of such noncompliance or noncompletion, executed by The Architectural Control Committee, or its designated representative, shall appear of record in the *office of the County Clerk and Recorder of Harris County, Texas*, or unless legal proceedings shall have been instituted to enforce compliance or completion.

**Section 4. Rules and Regulations.** The Architectural Control Committee may, from time to time, at its sole discretion, adopt, promulgate, amend and repeal rules and regulations interpreting and implementing the provisions of Article VI.

**Section 5. Variances.** The Architectural Control Committee, by the vote or written consent of a majority of the members thereof, may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration under the jurisdiction of such committee pursuant to this Article VI, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Property.

## ARTICLE VII

### DUTIES AND MANAGEMENT OF THE ASSOCIATION

**Section 1. Duties and Powers.** In addition to the duties and powers enumerated in its Articles of Incorporation and By-laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall

- (a) Own, maintain and otherwise manage all Reserve Areas and all facilities, improvements and landscaping thereon, and all other property acquired by the Association.
- (b) Pay any real and personal property taxes and other charges assessed against the Reserve Areas.
- (c) Have the authority to obtain, for the benefit of all of the Reserve Areas, all water, gas and electric services and refuse collection.
- (d) Grant easements where necessary for utilities and sewer facilities over the Reserve Areas to serve the Reserve Areas and the Property in general.
- (e) Maintain such policy or policies of insurance as the Board of Directors of the Association may deem necessary or desirable in furthering the purposes of and protecting the interest of the Association and its members.
- (f) Have the authority to contract with a management company for the performance of maintenance and repair and for conducting other activities on behalf of the Association provided that such contract shall be limited to a duration of one (1) year, except with the approval of a majority of the Members entitled to vote. Any such management agreement shall provide that it will be terminable by the Association without a termination fee for cause upon thirty (30) days' written notice or without cause by either party upon ninety (90) days' written notice.
- (g) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association.

(h) Have a duty to landscape and maintain the landscaping upon the Reserve Areas and the duty to maintain the perimeter walls or fences located at entrances to the Property, Reserve Areas, greenbelt buffers, parks and fencing and walls located on portions of Lots adjoining such areas as shown on the recorded part of the property.

## ARTICLE VIII

### UTILITY BILLS, TAXES AND INSURANCE

#### **Section 1. Obligation of Owners.**

(a) Each owner shall have separate electric, gas, and water meters and shall directly pay for all electricity, gas, water, sanitary sewer service, telephone service, security systems, cable television and other utilities used or consumed by Owner.

(b) Each Owner may directly render for taxation Owner's Lot and improvements thereon, and shall, at Owner's own cost and expense, directly pay all taxes levied or assessed against or upon Owner's Lot.

#### **Section 2. Obligation of the Association.**

(a) The Association shall pay, as a common expense of all owners, all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Open Areas or any part thereof.

(b) The Association may render for taxation and, as a part of the common expense of all Owners, shall pay all taxes levied or assessed against or upon the Reserve Areas and the improvements and the property appertaining thereto.

(c) The Association shall have authority to obtain and continue in effect as a common expense of all owners, a blanket property insurance policy or policies to insure the structures and facilities in the Reserve Areas and the contents thereof and the Association against risks of loss by damage by fire and other hazards as are covered under standard extended coverage provisions, in such amounts as the Association deems proper and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such amounts as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with the Common Open Areas.

(d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid as a common expense of all owners and shall be paid out of the assessments.

## **ARTICLE IX**

### **RESTRICTIONS OF USE**

**Section 1. Single Family Residential Construction** Subject to Sections 2 and 11 of this Article, each lot shall be used only for single family residence purposes. No building shall be erected, altered or permitted to remain on any Lot other than one single family detached residential dwelling not to exceed three (3) stories in height, and a private garage for not more than three (3) cars and bona fide servants' quarters, which structure shall not exceed the main dwelling in height or number of stories. No such residence shall be constructed on less than the equivalent of one full Lot defined in this Declaration or that may appear on any recorded plat or replat approved by Declarant or its assignee.

**Section 2. Prohibition of Offensive or Commercial Use.** No activity which may become an annoyance or nuisance to the neighborhood or which shall in any way unreasonably interfere with the quiet enjoyment of each Owner or of such Owner's Lot or which shall degrade property values or distract from the aesthetic beauty of the Property, shall be conducted thereon. No repair work, dismantling, or assembling of boats, motor vehicles or other machinery shall be done in any driveway or adjoining street. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes. Notwithstanding the above, Declarant, its successors or assigns, or Builders may use the property for model homes display and sales offices during the development period during construction or until all new homes on the Property have been sold.

### **Section 3. Minimum Square Footage.**

(a) The living area of the main residential structure for Lots, *exclusive* of porches, garage and servants' quarters, shall not be less than 2200 square feet.

**Section 4. Building Material.** The predominant exterior materials of the main residential structure and the garage, whether attached or detached, shall be masonry, stucco, stone or wood. No single-family construction, private garage or any other structure located on the Property shall be permitted to have a heating or cooling device located in a window or any other opening which can be viewed from any portion of the Property. Heating and cooling devices may be used in windows or other openings of any structure used by Declarant or a Builder during the completion and sale of all construction of this subdivision.

**Section 5. Location of Improvements upon the Lots.** No building shall be located on any Lot nearer to the front line nor nearer to the side street line than the minimum building setback lines shown on the recorded plats. No building shall be located on any Lot nearer than ten (10) feet to any side or rear street line. Building setbacks from interior side lot lines shall be subject to the following provisions:

Subject to the provisions of Article VI, Section 1 and Section 6 of this Article, no building on Lots shall be located nearer than five (5) feet to an interior side lot line, except that a garage located sixty (60) feet or more from the front lot line may be a minimum distance of three (3) feet from an interior side lot line. For the purpose of this provision, eaves, steps, box type windows and unroofed ground-level terraces shall not be considered as part of a building; provided, however that this shall not be construed to permit any improvement to encroach within three (3) feet of the side or rear lot line.

For the purpose of these restrictions, carports located on Lots shall be considered as garages and shall meet all the requirements for garages, including location, material and construction. Access to corner lot garages directly from side streets is prohibited unless specifically approved by Declarant or its assignee.

**Section 6. Deviations.** Declarant at its sole discretion, is hereby permitted to approve deviations in these restrictions on building area, location of improvements on the Lots and building materials in instances where in its judgment such deviation will not adversely affect the development of the property as a whole.

Such approvals must be granted in writing and when given will automatically amend these restrictions.

**Section 7. Composite Building Sites.** Any Owner of one or more adjoining Lots (or portions thereof,) may consolidate such Lots or portions into one (1) building site, with the privilege of placing or constructing improvements on such resulting site, in which event, setback lines shall be measured from the resulting side property lines rather than from the lot lines as indicated on the recorded plat. Any such composite building site must have a frontage at the building setback line of not less than the minimum frontage of lots in the same block on the recorded plat of Vista Oaks Subdivision. Any revision of lot sizes may be made only with written approval of Declarant.

**Section 8. Utility Easements.** Easements for installation and maintenance of utilities are reserved as shown on the recorded plat, and no structure shall be erected *on any* of such easements. Neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or contractors, to shrubbery, trees, flowers or improvements located on the land covered by such easements.

**Section 9. Electrical Distribution Service.** The owner of each lot containing a single dwelling unit shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes. The point of attachment to be made available by the electric company at a point designated by such company at the property line of each lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter.

Declarant has either by designation on the plat or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowner's reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each lot containing a single dwelling unit shall at his own costs, furnish, install own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter or such electric company for each dwelling unit involved. For so long as this service is maintained in the Property, the electric service to each dwelling unit shall be underground, uniform in character, and exclusively of the type known as single phase, 120/240-volt, three wire, 60 cycle, alternating current.

The electric company has installed the electric distribution system in the Property at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the lots are being developed for residential dwelling units, all of which are designated to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes), built for sale or rent.

The Provisions of the two preceding paragraphs also apply to any future residential development shown on the plat as such plat exists at the execution of the agreement for underground electric service between the electric company and Declarant or thereafter.

Easements for the underground service may be crossed by driveway and walkways provided the Lot Owner makes prior arrangement with the utility company furnishing any utility service occupying the easement and provides and installs the necessary conduit of approved type and size under such driveway or walkways prior to construction thereof.

Such easement for the underground service shall be kept clear of all other improvements, including buildings, patios or other paving, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees, flowers or other improvements (other than crossing driveways or walkways providing conduit has been installed as outlined above) of the Lot Owner located on the land covered by such easements.

#### **Section 10. Audio and Video Communication Service.**

In the event that audio and video communication services and facilities are made available to any Lot by means of an underground coaxial cable system, there is hereby reserved to the company furnishing such services and facilities a two (2) foot wide easement along and centered on the underground wire or cable when and as installed by the company furnishing the service from and at a right angle to the utility easement nearest to the point of connection on the permanent improvement or structure constructed, or to be constructed, upon the Lot and in a direct line from the nearest utility easement to the point of connection.

#### **Section 11. Temporary Structures and Outbuildings.**

No structures of a temporary character, nor any recreational vehicle, mobile home, trailer, basement, tent, shack, garage, barn, playhouse or other outbuildings shall be constructed, erected, altered, placed, or permitted to remain on any Lot at any time as a residence. Outbuildings or structures, whether temporary or permanent, used for accessory, playhouse, storage or other purposes, shall be limited to eight (8) feet in height and one hundred (100) square feet in area, and must be approved in accordance with Article VI, Section I of this Declaration. Temporary structures may be used as sales offices or as construction offices and for other related purposes by Declarant or Builders during the construction and sales period. Such structures shall be inconspicuous and sightless and shall be removed at completion and sale of all construction of this subdivision.

**Section 12: Animal Husbandry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats or other common household pets (not to exceed two of each category) provided they are not kept, bred or maintained for commercial purposes. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious to residents in the vicinity. Animals are not permitted to roam the Property and must be controlled on a leash if they are not on a Lot.

**Section 13. Walls, Fences and Hedges.** All walls, fences, planters and hedges shall be controlled strictly for compliance with this Declaration and architectural standards established by the Declarant or the Architectural Control Committee. No wall, fence, planter or hedge in excess of two (2) feet in height shall be erected or maintained on a side lot line beyond a point located three (3) feet back from the front exterior wall of the main residential structure located on a Lot. For the purpose of this provision, the front wall of the main residential structure excludes bay or box windows, chimney structures or any other similar appendage.

No wall, fence, or hedge in excess of six (6) feet in height shall be erected or maintained on a side lot line from a point located three (3) feet back from the front exterior wall of the main residential structure, backward to the rear property line on a Lot. No rear fence, wall or hedge shall be more than six (6) feet high.

On corner lots, fences shall not be erected or maintained closer to the side Lot line than the side building line setback shown on the plat for Vista Oaks, recorded in Volume Page of the Map records of Harris County, Texas.

Perimeter fencing on all Lots shall be maintained to a fence standard equivalent to original construction and all fencing must be consistent with this Declaration and architectural standards established by Declarant or the Architectural Control Committee.

Fences of wire or chain link construction are prohibited, and the design and materials of all fences shall be approved by the Architectural Control Committee prior to construction pursuant to the approval requirements of Article VI, Section 1 of this Declaration.

**Section 14. Antennae.** Subject to Section 10 of this Article, no electronic, radio, television or other type of antenna for receiving or transmitting visual or sound communications or any electronic antenna of any kind shall be constructed, erected, placed or permitted to remain on any Lot, or any residential dwelling or outbuilding or any other structure thereon unless it is located at the rear of the residential dwelling or to the rear of the roof line, gable or center line of the residential dwelling so as to be completely hidden from sight when viewed from the fronting street on interior lots and when viewed from either the fronting or siding streets on corner Lots.

**Section 15. Visual Screening.** All clotheslines, equipment, garbage cans, service yards, woodpiles, refuse containers, or storage piles and household projects such as equipment repair and construction projects shall be screened by adequate planting or fencing so as to conceal them from view of neighboring lots, streets, parks and public areas. All rubbish, trash, and garbage shall be kept in sanitary refuse containers with tightly fitting lids and shall be regularly removed from the lots and not allowed to accumulate thereon.

**Section 16. Visual Obstructions at the intersections of Public Streets.** No object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways within the triangular area formed by the junction of street curb lines and a line connecting them at points twenty-five (25) feet from the junction of the street curb lines (or extensions thereof) shall be placed, planted or permitted to remain on any corner lots.

**Section 17. Lot Maintenance.** All Lots shall be kept at all times in a sanitary, healthful and attractive condition, and the Owner or occupant of all Lots shall keep all weeds and grass thereon cut and neatly maintained and shall, in no event, use any Lot for storage of material and equipment except for normal residential purposes or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish or any kind thereon, and shall not burn any garbage, trash or rubbish.

**Section 18. Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment.** No automobiles, boats, trailers, campers, recreational vehicles, motorcycles, buses, inoperative vehicles of any kind, camp rigs, or boat rigging shall be parked or stored permanently or semi-permanently on any public street right-of-way, front yard area or on driveways. Permanent or semi-permanent storage of such vehicles or items must be completely screened from public view either within the garage or behind a solid fence.

For the purposes of these restrictions, the word "semi-permanent" shall be defined as remaining in the same location without movement for forty-eight (48) or more consecutive hours.

No eighteen-wheel vehicles or other similar large van or flat-bed type vehicle may be parked on any public street right-of-way, front yard area or on driveways except to deliver merchandise or other materials to residents or construction sites.

### **Section 19. Signs, Advertisements, and Billboards.**

No sign, advertisement, billboard or advertising structure of any kind shall be displayed to the public view or any portion of a Lot except for one sign for each Lot of not more than twenty-eight (28) inches by thirty-eight (38) inches solely advertising the Lot for sale or rent, and except signs used by Declarant or a Builder to advertise the Lot during the construction and sales period. Signs for political candidates shall be allowed for a period of sixty days prior to a municipal, county, state, or federal election. Political signs shall be removed 48 hours after an election.

The Declarant and the Association shall have the right to remove any signs, advertisement or billboard or structure which is placed on said Lot in violation of this section and in so doing shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

**Section 20. Removal of Soil and Trees.** The digging of soil or the removal of soil from a Lot is expressly prohibited except as necessary in conjunction with the landscaping of, or construction on said Lots.

**Section 21. Sidewalks.** Before a dwelling is completed or occupied, the Lot Builder shall construct a concrete sidewalk in the public street right-of-way, four (4) feet in width parallel to the street curb generally two (2) feet from the Lot boundary and shall extend to the projection of the Lot boundary lines into the street right-of-way and/or street curbs at corner lots. Placement of sidewalks in public rights-of-way around the terminus of cul-de-sac streets shall follow the pattern of the incoming sidewalk as proposed or built on adjacent lots. Generally, the sidewalk shall be placed two feet from the front lot line toward the street. The intent of this guide is to insure a continuous walk around the terminus. Owners of corner lots shall install such a sidewalk parallel to the front lot line and the side lot lines. The Declarant or its assignee, at its sole discretion, is hereby permitted to grant deviations as to geometric sidewalk placement or construction materials. Said deviations shall automatically amend these restrictions with respect to the lot(s) involved.

**Section 22. Roofing Material** Roofing Materials may include composition shingles having a minimum weight classification of 300 pounds per square, or having a 25-year guarantee, slate, clay or concrete tiles. Composition shingle roofs shall be comparable in color to weather wood shingles and comparable in surface textural appearance to wood shingles. Colors for slate, clay or concrete tile roofs shall be approved individually by the Declarant or its assignee. Any other type roofing material shall be permitted only at the sole discretion of the Declarant or its assigns upon written request.

**Section 23.** Each Lot builder shall transplant before occupancy at least 2 **oak trees** on the lot in front of the residence constructed thereon. Such trees shall be at least three (3) inches in diameter at one foot above ground level.

**Section 24. Enforcement.** In the event of default on the part of the Owner or occupant of any Lot in observing any or all of the requirements herein set forth, such default continuing after ten (10) days written notice thereof, the Declarant or the Association may, without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot to cut or cause to be cut, such weeds and grass, and remove or cause to be removed such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work.

The owner or occupant, as the case may be, agrees, by the purchase or occupation of the Lot, to pay such statement immediately upon receipt thereof. To secure the payment of such charges in the event of nonpayment by the Owner, a vendor's and continuing contractual lien shall be retained by Declarant at the time of conveyance of each Lot in favor of Declarant or the Association, but inferior to a purchase money or mortgage. Such vendors and continuing contractual lien shall be applicable and effective whether mentioned specifically or omitted in such conveyance of a Lot by Declarant.

## ARTICLE X

### **MORTGAGEE PROTECTION: MANAGEMENT AGREEMENTS; RESERVE FUNDS: LEASES**

**Section 1. Notice to First Mortgagees.** Upon written request to the Association at the address of the Association's registered agent filed with the Secretary of State of the *State of Texas*, all holders of first mortgage liens on Lots, hereinafter called "first Mortgagees", shall be entitled to:

- (a)inspect the books and records of the Association during normal business hours at a time mutually convenient to Declarant and First Mortgagee;
- (b)receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year;
- (c) receive written notice of all meetings of the Association and designate a representative to attend all such meetings;
- (d)upon request, receive notice of any default in the performance by the First Mortgagee's mortgagor of any obligation under this Declaration, the By-laws or Articles of Incorporation of the Association which is not cured within sixty (60) days;
- (e)receive notice of any abandonment or termination of the development;
- (f) receive notice of any material amendment to this Declaration, or to the By-laws or Articles of Incorporation of the Association: and
- (g)receive notice of any decision to terminate professional management and assume self-management.

**Section 2. Alienation of Reserve Areas.** Except as to the Association's right to grant easement for utilities and similar or related purposes, the Reserve Areas may not be abandoned, partitioned, subdivided, sold, alienated, released, transferred, hypothecated or otherwise encumbered without the approval of two thirds (2/3) majority of all First Mortgagees (based upon one vote for each mortgage held).

**Section 3. Changes in Assessment Procedures.** Any changes in the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner, other than the procedures described herein, shall be approved by a two-thirds majority of the First Mortgagees (based upon one vote for each mortgage held).

**Section 4. Mortgagee-Required Approval.** Unless all of the first Mortgagees, who have notified the Association pursuant to Section 1 of this Article, have given their prior written approval, the Association shall not be entitled to

- (a) fail to maintain fire and extended coverage on insurable improvements in Reserve Areas, if any, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost), and
- (b) use hazard insurance proceeds for losses to improvements in Reserve Areas, if any, for other than the repair, replacement, or reconstruction of such improvement.

## **Section 5. Reimbursement to Mortgagees for Payment of Taxes or Insurance Premiums.**

**Premiums.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Reserve Areas and may pay overdue premiums of hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for improvements in the Reserve Areas, if any, and First Mortgagees making such payments shall be owed immediate reimbursement, therefore, from the Association.

**Section 6. Insurance on Condemnation Proceeds: Notice.** No provision of this Declaration or of the Bylaws or Articles of Incorporation of the Association shall be construed as giving an Owner or other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Reserve Areas. An institutional holder of a first mortgage shall be entitled to receive timely written notice of substantial damage or a taking of the Reserve Areas.

**Section 7. Management Agreements.** Any management agreement will be terminable by the Association without payment of a termination fee with cause upon thirty (30) days written notice or without cause by either party on ninety (90) days written notice. The term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

**Section 8. Reserve Fund.** Association budgets shall include an adequate reserve fund for maintenance, repairs, and replacement of those elements of the Reserve Areas that must be replaced on a periodic basis and will be payable in regular installments as part of the common assessment.

## **Section 9. Leases.**

(a) Any lease agreement between an Owner and a lessee shall be subject in all respects to the provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association whether or not reference is made to the Declaration, By-laws and Articles of Incorporation in the lease.

(b) Effective July 1, 2021, no owner in the Vista Oaks subdivision may rent or lease their property to a tenant. Any home that is currently leased in Vista Oaks, upon change of ownership, will be covered under Article X Section 9 Leases section of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VISTA OAKS.

(c) Definitions:

Homeowners - "Homeowners" means the same as Owner or Owners under these Rules and the Dedicatory Instruments of the Association.

Lease - A "lease" includes any written agreement between a landlord and a tenant that establishes or modifies the terms, conditions or other provisions regarding the use and occupancy of the Property.

Lessee - "Lessee" shall be considered the same as Tenant for purposes of these Rules.

Rent - "Rent shall be considered the same as Lease for purposes of these Rules.

Tenant - "Tenant" means the person(s) authorized by the lease to occupy the residence, which would include the named lessee(s). There may be more tenants than lessees for a Property unless the context indicates otherwise.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or thereafter imposed by the provisions of this Declaration. Failure by the Association or by 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.

**Section 2. Severability.** Invalidation of any one of these covenants, conditions or restrictions shall not affect any other provision, which shall remain in full force and effect.

**Section 3. Duration Amendment.** The provisions of this Declaration shall run with and bind the Property for a term of twenty-five years from this date, after which they shall be automatically extended for successive periods of ten years.

This Declaration may be amended during the first twenty-five-year period by an instrument signed by a sufficient number of Owner's representing not less than two-thirds (2/3) of the votes in the Association, and thereafter by an instrument signed by a sufficient number of Owners representing not less than fifty percent of the votes. In addition, any amendment hereof (1) to change the methods of determining the obligations, assessment, dues or other charges which may be levied against an Owner, or (2) to change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the maintenance of Reserve Areas, or (3) to use hazard insurance proceeds for losses to the improvements in Reserve Areas, if any, for other than the repair, replacement, or reconstruction of such improvements shall require the additional approval of two thirds (2/3) majority of the First Mortgagees (based upon one vote for each mortgage owned).

(a) Any amendment hereto affecting any of the following shall require the additional approval of fifty-one percent (51%) of the First Mortgagees (based upon one vote for each mortgage owned):

(1) voting:

(2) reserves for maintenance of the Property:

(3) insurance or fidelity bonds:

(4) right to use of the Reserve Areas:

(5) responsibility for maintenance of the Reserve Areas:

(6) addition to or withdrawal of a portion of Reserve Areas:

(7) sale of Reserve Areas to permit subdivision into Lots, or for other purposes:

(8) imposition of any right of first refusal or similar restriction on the rights of an Owner to sell, transfer, or otherwise convey a Lot: and

(9) any provisions which are for the express benefit of First Mortgages, or eligible insurers or guarantors of first mortgages on Lots.

All amendments shall be recorded in the Official Public Records of Real Property of Harris County, Texas.

Deeds of Conveyance of Lots, or any part thereof, may contain the above restrictive covenants by reference to this document, but whether or not such reference is made, each and all of such restrictive covenants shall be made valid upon the respective grantees.

(b) The Declarant reserves the right during the development period, without joinder or consent of any Owner or mortgagee, to amend this declaration or the by-laws by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correct any inadvertent misstatements, error or omissions herein, or to comply with the requirement of Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, or Federal Housing Administration, provided that no such amendment shall change the vested property rights of any Owner, except as otherwise provided herein.

(c) Any such additional land shall be developed in a manner similar to the development of the Property in accordance with a general plan of development under which the architectural standards prevailing within the property will be continued in such annexed lands. The dwellings to be constructed on Lots within such annexed lands will be similar to other residential dwellings constructed on the Property, and the lots within the annexed lands will become subject to assessment in the same manner as then prevailing for the Property. All the provisions of this Declaration shall apply to the lands being annexed with the same force and effect as if said lands were originally included in the Property subject to this Declaration.

(d) The additions authorized under this Section shall be made by filing of record: (a) Supplementary Declaration(s) of Covenants, Conditions and Restrictions with respect to the additional lands which shall (1) extend the scheme of the covenants and restrictions of this Declaration to such land and (2) provide, if applicable, that the proportionate ownership interest in the Reserve Areas of the Owners by virtue of Association membership immediately prior to the filing of such Supplementary Declaration shall be equal to the number of lots owned by such Owner divided by the total number of Lots within the lands then subject to this Declaration after such annexation; and (b) a deed from Declarant to the Association which shall convey to the Association all of the area within such additions (except for the Lots therein) as Reserve Areas for the benefit and use of the Owners, with reservations of Declarants rights set forth herein.

**Section 4. Books and Records.** The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any Member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any Member will not become burdensome to or constitute harassment of the Association. The Declaration, the Articles of Incorporation and By-laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

**Section 5. 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 last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

**Section 6. Good Faith Lender's Clause.** Any violation of these covenants, conditions, or restrictions shall not affect any lien or deed of trust of record held in good faith, upon any Lot, which liens may be enforced in due course, subject to the terms of this Declaration.

**Section 7. Mergers.** Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its 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. The surviving or consolidated association shall administer the covenants, conditions and restrictions contained in this Declaration, under one administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

**Section 8. Annexation.**

- (a) Addition land or lands may be annexed to the Property with the consent of two-thirds (2/3) of each class of Member, and the approval of the owner(s) of the land to be annexed.
- (b) Notwithstanding anything contained in Subparagraph (a) above, or any other provision herein, Declarant shall have the right, without the consent of any other Owners or any First Mortgagee, to bring within the scheme of the Declaration, in one (1) or more future stages, sections or additions, those additional lands or portions thereof as described in Exhibit "A" attached hereto, made a part hereof and incorporated herein for all purposes, within ten (10) years of the date of recording of this instrument. Further, any land annexed to the Property and subject to this Declaration may be acquired (by gift, purchase, or otherwise) and/or designated as Reserve Areas by the Association without the consent of any owners or any First Mortgagee. Nothing in this Declaration shall be construed to represent that Declarant, or its successors or assigns, are under any obligation to add or annex additional lands to those subject to this Declaration.

Converted to electronic format on Feb 17, 2019