Declaration of Covenants and Restrictions of The Woodlands

The Woodlands Commercial Owners Association



THE WOODLANDS TOWNSHIP

2801 Technology Forest Blvd. • The Woodlands, Texas 77381 p 281-210-3800 • f 281-210-3963 • www.thewoodlandstownship-tx.gov



TABLE OF CONTENTS

ARTICLE I

	DEFINITIONS
Section 1.01:	"Additional Property"
Section 1.02:	"Annual Assessment"
Section 1.03:	"Appraisal District"
Section 1.04:	"Assessable Lot"
Section 1.05:	"Assessed Valuation"
Section 1.06:	"Assessment Rate"
Section 1.07:	"Benefit Assessments"
Section 1.08:	"Benefitted Area"
Section 1.09:	"Board"3
Section 1.10:	"Certificate of Compliance"
Section 1.11:	"Certified Tax Roll"
Section 1.12:	"Community Facilities"
Section 1.13:	"Community Standards Committee"
	"County"3
Section 1.15:	"Covenant Imposition Year"
Section 1.16:	"Covenants"
Section 1.17:	"C.P.I."
Section 1.18:	"Default Rate"
	"Directors"
Section 1.20:	"Easement Area"
Section 1.21:	"Effective Date"
Section 1.22:	"Exempt Property"
Section 1.23:	"Highest Lawful Rate"
Section 1.24:	"Improvement"
Section 1.25:	"Late Fee"5
Section 1.26:	"Lot"5
Section 1.27:	"Maximum Assessment Rate"
Section 1.28:	"Member(s)"
Section 1.29:	"Note Holder"5
Section 1.30:	"Note(s)"
Section 1.31:	"Notice"
Section 1.32:	"Occupant"
Section 1.33:	"Owner"
Section 1.34:	"Owner's Certificate"
Section 1.35:	"Person"
Section 1.36:	"Prime Plus Rate"6
Section 1.37:	"Property"

	"Records"	
Section 1.39:	"Released Parties"	.6
Section 1.40:	"Residential Lots"	.6
Section 1.41:	"Statutes"	.6
Section 1.42:	"Successor Entity"	.6
Section 1.43:	"Taxable Improvements"	.6
Section 1.44:	"The Woodlands"	.6
	"Trustee"	
Section 1.46:	"TWC"	.7
Section 1.47:	"Unit"	.7
Section 1.48:	"User Fees"	.7
Section 1.49:	"Use Restrictions"	.7
Section 1.50:	"Waterway"	.7
	"WCOA"	
	"WCOA Articles"	
Section 1.53:	"WCOA By-laws"	.8
Section 1.54:	"Year"	.8
	A DITLOY IT W	
	ARTICLE II NOTICE REGARDING COVENANTS	Q
	NOTICE REGARDING COVENANTS	.0
	ARTICLE III	
	SSESSMENTS, USE OF FUNDS AND CHARGES	
	Annual Assessment.	
	Benefit Assessments.	
	User Fees.	
	Purposes for Which Funds May Be Used.	
	Assessment Procedures.	
	Certification of Annual and Benefit Assessments.	
	Abatement of Annual Assessments.	13
Section 3.08:	Late Fee, Interest on Delinquent Annual Assessments and	
	Benefit Assessments.	13
	ARTICLE IV	
IMPOS	SITION OF CHARGE AND LIEN UPON PROPERTY	14
	Covenant to Pay Annual and Benefit Assessments and	
5000001 4.01.	Conditions Creating Lien.	14
Section 4 02:	Owner's Liability for Payment of Assessments.	
	Lien.	
	Remedies of WCOA in the Event of Default.	
	ARTICLE V	
a	COMMUNITY FACILITIES	
Section 5.01:	Establishment and Use of Community Facilities.	16

Section 5.02:	Suspension of Rights.	17
Section 5.03:	Right to Enjoyment of Land.	17
	ARTICLE VI	
	OODLANDS COMMERCIAL OWNERS ASSOCIATION	
	Governing Provision.	
	Members.	
	Board of Directors.	
Section 6.04:	Powers and Duties.	19
	ARTICLE VII	
	COVENANTS FOR MAINTENANCE	22
Section 7.01:	Maintenance by Owner.	
	ADTICLE VIII	
	ARTICLE VIII COMMUNITY STANDARDS COMMITTEE	22
Section 9.01:		
	Organization of Community Standards Committee.	
Section 8.02: Section 8.03:	Establishment and Amendment of Rules and Policies	
	Operations of the CSC.	
	Construction and Alteration of Improvements.	
	Disapproval of the Plans by CSC.	
	Commencement and Completion of Construction.	
Section 8.08:		
	Filing of Approved Plans.	
Section 8.10:	\mathcal{C}	28
Section 8.11:	Owner's Certificate and Certificate of Compliance of an	20
G 4: 0.10	Improvement.	
	Fees for Examination of Plans and Specifications.	
	Violation of Article VIII.	
	Enforcement.	
Section 8.15:	Generality not Affected by Specificity.	30
	ARTICLE IX	
G	SENERAL COVENANTS AND RESTRICTIONS	30
Section 9.01:	Water Wells.	30
Section 9.02:	Clearing Restrictions.	31
	Placement of Signs on Property.	
	Disposition of Trash and Other Debris	
	Placement of Pipelines.	
	Mining	
	Fireworks and Use of Firearms.	
	Use Restrictions.	
	Prohibition of Nuisances.	

		Keeping of Animals on Lots.	
Section	9.11:	Parking.	33
		ARTICLE X	
RESII	DENTI	IAL PROTECTIVE COVENANTS AND RESTRICTIONS	33
Section	10.01:	Residential Provisions.	33
		Utilities	
		Truck, Trailer, Recreational Vehicle and Boat Parking	
		Temporary Buildings Restrictions.	
		Profession or Home Industry.	
Section	10.06:	Lot Use for Model Home or Real Estate Office.	34
		ARTICLE XI	
		EASEMENTS	34
		Rights Concerning Easements and Rights-of-Way	
Section	11.02:	Definition of "Easement Area".	35
		ARTICLE XII	
		WATERFRONT AREAS AND WATERWAYS	36
Section	12.01:	Restrictions for Waterways.	36
Section	12.02:	Use of Boats.	36
		ARTICLE XIII	
		DURATION AND AMENDMENT	36
Section	13.01:	Duration, Amendment or Termination of Covenants	36
		ARTICLE XIV	
		GENERAL	37
		Violation or Breach of Covenants.	
		Failure to Enforce Covenants.	
		Covenants Do Not Create Reversion.	
		Relief for Violation or Breach.	
		Enforcement of Covenants.	
Section	14.06:	Promise of Grantee and others to be Bound by Covenants	38
		ARTICLE XV	
		WAIVER OF LIABILITY	39
Section	15.01:	Waiver of Liability.	39
		ARTICLE XVI	
		MISCELLANEOUS	
		Alteration of these Covenants.	
		Severability of Provisions of these Covenants.	
Section	16.03:	Assignment by WCOA.	40

Section 16.04: Definition of "Titles".	40
Section 16.05: Notices.	40
Section 16.06: Assignment of TWC's Rights and Duties.	.41
Section 16.07: Enlargement of the Property.	.41
Section 16.08: Mutuality, Reciprocity, Runs with Land	42
Section 16.09: No Warranty of Enforceability.	.42
Section 16.10: Time is of the Essence.	43
Section 16.11: Further Restrictions.	43
Section 16.12: Maximum Interest Payable	43
Section 16.13: Governing Law.	.43

Exhibit "A" - Description of Property

DECLARATION OF

COVENANTS AND RESTRICTIONS OF

THE WOODLANDS COMMERCIAL OWNERS ASSOCIATION

RECITALS:

- A. The Woodlands Corporation, a Delaware corporation ("TWC"), is the owner of that certain real property located in Montgomery County, Texas, and being more particularly described in Exhibit "A" attached hereto.
- B. TWC has developed, and continues to develop, a community known as "The Woodlands" on lands which include the "Property" (as hereinafter defined) affording well-planned residential, commercial, industrial, recreational, and institutional buildings and facilities as well as open space.
- C. Portions of The Woodlands will continue to be developed primarily for commercial purposes, and will also include lands used for industrial, institutional, residential, recreational and open space purposes.
- D. The Woodlands Commercial Owners Association, a Texas non-profit corporation ("WCOA"), has been formed for the purpose of providing a non-profit civic organization to serve as the representative of the Owners (as hereinafter defined) of those portions of The Woodlands which are subject to these Covenants (as hereinafter defined), with respect to the assessment, collection and application of all charges imposed hereunder, the enforcement of all covenants, restrictions, easements, charges and liens created hereby, and the creation, operation, management and maintenance of the Community Facilities (as hereinafter defined) and provision of the services referred to hereinafter.
- E. This instrument is referred to as the "Covenants" in the Articles of Incorporation of WCOA.
- F. TWC desires to impose the Covenants upon the Property in order to, among other things:
 - (1) establish, impose and create a uniform plan and scheme of development for the Property;
 - (2) provide funds for use as specified in <u>Article III</u> hereof;
 - (3) grant rights and privileges relating to the use of certain facilities, subject the conditions set forth herein; and

- (4) impose land use and design control criteria for the development of the Property.
- G. It is the intent of TWC to cause the covenants, restrictions, easements, charges and liens herein set forth to burden, affect, bind and run with title to the Property so as to cause such covenants, restrictions, easements, charges and liens to be binding upon, inure to the benefit of and be enforceable by the Owners, WCOA and TWC.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That TWC, upon the recording hereof, does hereby adopt, establish and impose the following covenants, restrictions, easements, charges and liens to apply to the use, improvement, occupancy and conveyance of the Property. Each contract, deed, lease or other conveyance which may be hereafter executed with regard to any portion of the Property shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the land and be binding upon all successive owners thereof regardless of whether or not the following covenants, restrictions, easements, charges and liens are set out in full or incorporated by reference in said conveyance.

ARTICLE I DEFINITIONS

As used herein, the following words and terms shall have the respective meanings set forth below:

- **Section 1.01: "Additional Property"** shall have the meaning specified in <u>Section 16.07</u>.
- **Section 1.02: "Annual Assessment"** shall have the meaning specified in <u>Section 3.01</u>.
- **Section 1.03: "Appraisal District"** shall mean the Central Appraisal District of the county in which the referenced portion of the Property covered by these Covenants lies, or any successor entity or agency to any such Appraisal District.
- **Section 1.04: "Assessable Lot"** shall mean and refer to the fee estate in the surface of and aerial rights above each Lot and all Taxable Improvements thereon, except Lots and Improvements that are Exempt Property.
- **Section 1.05: "Assessed Valuation"** shall have the meaning specified in Section 3.01.

- **Section 1.06:** "Assessment Rate" shall mean and refer to a specified number of cents for each One Hundred Dollars (\$100.00) to be multiplied times the then current Assessed Valuation of each Assessable Lot to determine the Annual Assessment for each such Assessable Lot.
- **Section 1.07: "Benefit Assessments"** shall have the meaning specified in <u>Section 3.02</u>.
- **Section 1.08: "Benefitted Area"** shall have the meaning specified in <u>Section 3.02A</u>.
- **Section 1.09: "Board"** shall mean and refer to the Board of Directors of WCOA and the Board of Directors or equivalent governing body of any Successor Entity.
- **Section 1.10: "Certificate of Compliance"** shall have the meaning specified in <u>Section 8.11</u>.
- **Section 1.11:** "Certified Tax Roll" shall mean and refer to the most current certified tax roll of the Appraisal District available as of September 1 of the Year during which Annual Assessments for the following Year are being determined.
- **Section 1.12: "Community Facilities"** shall have the meaning specified in <u>Section 5.01</u>.
- **Section 1.13: "Community Standards Committee"** or "CSC" shall have the meaning specified in Article VIII.
- **Section 1.14: "County"** shall mean Montgomery County, Texas or, as appropriate, any other county in Texas in which the referenced portion of the Property is located.
- **Section 1.15: "Covenant Imposition Year"** shall, for each Lot. mean and refer to the Year in which these Covenants are first imposed on that Lot.
- **Section 1.16: "Covenants"** shall mean and refer to these Covenants and Restrictions as the same may from time to time be supplemented or amended in the manner provided herein.
- Section 1.17: "C.P.I" shall mean and refer to either: (a) the Consumer Price Index (CPI-U)
 All items, All Urban Consumers, U.S. City Average, 1982-84 equals 100, published by the U.S. Department of Labor, Bureau of Labor Statistics; or (b) if the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish such index, then such other index as the Board shall select which in their judgment reflects the then broad range of economic factors represented in the Consumer Price Index -All items, All Urban Consumers, U.S. City Average, 1982-84 equals 100.
- **Section 1.18: "Default Rate"** shall mean and refer to the lesser of: (i) the Prime Plus Rate; or (ii) the Highest Lawful Rate.

- **Section 1.19: "Directors"** shall mean and refer to persons appointed or elected to the Board pursuant to <u>Section 6.03</u>.
- Section 1.20: "Easement Area" shall have the meaning specified in <u>Section 11.02</u>.
- **Section 1.21: "Effective Date"** shall have the meaning specified in <u>Section 16.05</u>.
- **Section 1.22: "Exempt Property"** shall mean and refer to the following portions or parts of the Property:
 - (1) all land and Improvements owned by the United States, the State of Texas, a County, or any instrumentality, political subdivision or agency of any such entity;
 - (2) all land and Improvements owned by WCOA (or a Successor Entity) for so long as WCOA (or such Successor Entity) shall be the owner thereof;
 - (3) all land and Improvements exempt from both County and the State of Texas real property taxes by virtue of applicable law; and
 - (4) any easement interest in any portion of the Property if the easement so created is used for public utility or common carrier purposes.

Notwithstanding anything contained herein to the contrary, in no event shall any portion of the Property described in (1) through (3) above be Exempt Property without the approval of the Board if it is used for residential, commercial. or industrial purposes.

Section 1.23: "Highest Lawful Rate" shall mean the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum rate of interest which the applicable payee of any indebtedness due under the provisions of these Covenants is allowed to contract for, charge, take, reserve or receive under applicable law.

Section 1.24: "Improvement" shall mean and refer to:

(1) any thing or device the placement of which upon any Lot may affect such Lot including. but not limited to, any building, structure, garage, porch. deck, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, communications facility (including but not limited to satellite dishes, antennas, etc.), swimming pool, play apparatus, clothesline, fence, curbing. parking lot, sign, paving, wall, landscaping, signboard or other temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

- (2) any physical change to existing Improvements which alters the existing Improvements, including by way of example, but not limited to, adding or removing square footage area space to or from an existing Improvement, painting or repainting an existing Improvement, or in any way altering the size. shape or physical appearance of any existing Improvements;
- (3) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; and
- (4) any change in the grade of any Lot.
- **Section 1.25:** "Late Fee" shall mean and refer to the fee described in <u>Section 3.08</u>.
- **Section 1.26:** "Lot" shall mean and refer to each separately described parcel of the Property and any Unit.
- **Section 1.27:** "Maximum Assessment Rate" for any Year shall be based on cumulative changes in the C.P.I. and shall be equal to the product obtained by multiplying Seventy-Five Cents (\$.75) by a fraction, the numerator of which shall be the most current C.P.I. available as of the 30th day of June of such Year and the denominator of which shall be the C.P.I. as of the 31st day of December, 1993.
- **Section 1.28: "Member(s)"** shall mean and refer to each and every Person who holds membership in WCOA, as set forth in <u>Article VI</u>.
- Section 1.29: "Note Holder" shall mean and refer to the holder or holder of any Note.
- **Section 1.30:** "Note(s)" shall mean and refer to notes, bonds, debentures or other evidences of indebtedness incurred, assumed, issued or exchanged by WCOA.
- **Section 1.31: "Notice"** shall have the meaning specified in <u>Section 16.05</u>.
- **Section 1.32: "Occupant"** shall mean any Person other than an Owner who has leased, rented, or is otherwise entitled to occupy and use any Lot or any portion thereof
- **Section 1.33: "Owner"** means every Person who holds a fee, leasehold or easement interest in or to any Lot whether or not such Person or entity actually resides on any part of the Property. "Owner" includes contract sellers. but excludes those owning an interest merely as security for the performance of an obligation.

- Section 1.34: "Owner's Certificate" shall have the meaning specified in <u>Section 8.11</u>.
- **Section 1.35: "Person"** shall mean and refer to one or more individuals, corporations, partnerships, organizations, or other entities.
- **Section 1.36: "Prime Plus Rate"** shall mean and refer to the fluctuating per annum daily rate of interest publicly announced by Chemical Bank, a New York corporation (or the successor to the majority of its assets), at its principal office in New York, New York, from time to time as its prime rate, adjusted as of the date of such change, plus three percent (3%), but not less than a daily rate of ten percent (10%) per annum.
- **Section 1.37: "Property"** as used in these Covenants shall mean and refer as follows:
 - (1) All lands described in Exhibit "A" attached hereto, and all Improvements thereon; and
 - (2) all lands and all Improvements thereon subsequently annexed hereto and made subject to these Covenants pursuant to <u>Section 16.07</u>.
- **Section 1.38: "Records"** mean the official public records of real property of the appropriate County.
- **Section 1.39: "Released Parties"** shall mean and refer to TWC, the CSC, WCOA and all of their respective employees, shareholders, directors, officers, agents, and any of their respective successors or assigns.
- **Section 1.40: "Residential Lots"** shall mean and refer to Lots restricted to use for residential purposes only, pursuant to <u>Article X</u>.
- **Section 1.41: "Statutes"** shall mean the laws, statutes and regulations in effect, from time to time, in the State of Texas for the foreclosure of deed of trust or mortgage liens upon real property.
- **Section 1.42: "Successor Entity"** shall mean any successor public body, authority, agency, district, or non-profit membership corporation which is the assignee of or otherwise the successor to all or a part of the rights of WCOA pursuant to Section 16.03.
- **Section 1.43: "Taxable Improvements"** shall mean and refer to all Improvements which, at the time of the assessment pursuant to <u>Article III</u> hereof, are located on an Assessable Lot.
- Section 1.44: "The Woodlands" shall have the meaning specified in the Recitals.

Section 1.45: "Trustee" shall have the meaning specified in <u>Section 4.03</u>.

Section 1.46: "TWC" shall mean and refer to:

- (1) The Woodlands Corporation;
- (2) any Person who succeeds to the rights, duties and obligations of The Woodlands Corporation under these Covenants by operation of law; and
- (3) any assignee of either (i) The Woodlands Corporation or (ii) a successor to The Woodlands Corporation referenced in Subsection (2) of this <u>Section 1.46</u>, which assignee is expressly assigned the rights, duties and obligations of The Woodlands Corporation under these Covenants.

Section 1.47: "Unit" shall mean and include each of the following:

- (1) the fee simple title to any Lot;
- (2) the fee simple title to a condominium unit located on any portion of the Property; and
- (3) any share, membership or other interest in any cooperative or other entity organized and operated for the purpose of making residential dwelling or commercial units available to its shareholders, members or other beneficiaries which share, membership or other interest entitles the owner thereof to possession of any residential dwelling or commercial unit within the Property.
- Section 1.48: "User Fees" shall have the meaning specified in Section 3.03.
- **Section 1.49: "Use Restrictions"** shall have the meaning specified in <u>Section 9.08</u>.
- **Section 1.50: "Waterway"** shall mean and refer to any lake, river, stream, canal or other body of water within or adjacent to the Property, whether or not such body of water continuously contains water.
- **Section 1.51: "WCOA"** shall mean and refer to The Woodlands Commercial Owners Association or any Successor Entity.
- **Section 1.52: "WCOA Articles"** shall mean and refer to the Articles of Incorporation of WCOA as they may be amended from time to time.

- **Section 1.53:** "WCOA By-laws" shall mean and refer to the By-laws of WCOA as they may be amended from time to time according to their terms.
- **Section 1.54: "Year"** shall mean and refer to any calendar year from January 1 to December 31.

ARTICLE II NOTICE REGARDING COVENANTS

Each Owner hereby acknowledges and agrees that the CSC has the sole and absolute right and authority pursuant to these Covenants to review and approve or disapprove plans for any and all Improvements to be constructed on the Property. Plans may be disapproved (i) if in the reasonable good faith judgment of the CSC the work contemplated by the plans is not consistent with the best interest of the Property and the current or future general development scheme being implemented, or to be implemented, by TWC or (ii) for any reason set forth in these Covenants and any and all rules and/or regulations promulgated pursuant to these Covenants including, without limitation, the reasons set forth in Sections 8.06 and 9.02 of these Covenants.

ARTICLE III ASSESSMENTS, USE OF FUNDS AND CHARGES

Section 3.01: Annual Assessment.

A. The Assessment Rate for the Year of 1993 shall be Fifty-Four cents (\$.54) for each One Hundred And No/100 Dollars (\$100.00) of the current Assessed Valuation of each Assessable Lot, which is hereby assessed as a charge against each Assessable Lot for the Year of 1993. For each subsequent Year, the Board shall determine the Assessment Rate and thereafter assess against each Assessable Lot a charge equal to the Assessment Rate multiplied by the then current Assessed Valuation of each Assessable Lot. Such charge for the Year of 1993 and all subsequent Years shall be hereinafter referred to as the "Annual Assessment." Annual Assessments shall be due and payable annually in advance. In making each Annual Assessment, the Board shall separately assess each Assessable Lot, and each Assessable Lot shall be charged with and subject to a lien for the amount of such Annual Assessment for such Assessable Lot. If the Board fails, refuses or is unable for any reason to establish an Assessment Rate for any Year, then the Assessment Rate for such Year shall be equal to the Assessment Rate for the previous Year. The Assessment Rate may be increased only when the Board determines that an increase in the Assessment Rate for the following Year is necessary to establish adequate capital and operating reserves, and to meet the anticipated expenses, costs of operation and planned expansion of WCOA.

Notwithstanding anything contained in these Covenants to the contrary, the Board shall not (i) increase the Assessment Rate except pursuant to this Section 3.01, (ii) take formal action on or impose an increase in the Assessment Rate more than once in any Year, or (iii) increase the Assessment Rate over the Maximum Assessment Rate.

- B. As herein used, "Assessed Valuation" for any Assessable Lot shall mean the value of the Assessable Lot determined as follows:
 - (1) For the Covenant Imposition Year, the Assessed Valuation of that Assessable Lot shall be the fair market value thereof. The fair market value shall be determined by a committee of Directors appointed by the Board, based upon evidence satisfactory to such committee.
 - (2) For any Year, subsequent to the Covenant Imposition Year, when the value of all Taxable Improvements on an Assessable Lot are not shown on the Certified Tax Roll, the Assessed Valuation of that Assessable Lot shall be the fair market value thereof. The fair market value shall be determined by the Board based upon evidence satisfactory to the Board.
 - (3) For any Year, subsequent to the Covenant Imposition Year, when either (a) there are no Taxable Improvements on an Assessable Lot or (b) the value of all Taxable Improvements on such Assessable Lot are shown on the Certified Tax Roll, the Assessed Valuation of that Assessable Lot shall be the value shown on the Certified Tax Roll.
 - (4) If the Appraisal District or any successor entity shall cease to determine such value or fail to determine such value in any Year, then the Board shall thereafter adopt, in its sole reasonable good faith discretion, an alternative method of assessment in order to provide sufficient revenue to meet the obligations of WCOA.
- C. WCOA shall send a written statement of the Annual Assessment to each Owner (or to the mortgage company holding a contractual lien upon the Assessable Lot or the applicable mortgage servicing company if the Owner has notified WCOA in writing that the Annual Assessment is to be paid out of escrow funds established and collected by said mortgage company for the purpose of paying the Annual Assessment) stating as to each Assessable Lot owned by such Owner (i) the Assessed Valuation of each such Assessable Lot; (ii) the Assessment Rate for the Year in question; (iii) the amount of the Annual Assessment assessed against each such Assessable Lot, stated in terms of the total sum due and owing as the Annual Assessment; and (iv) that unless the Owner shall pay the Annual Assessment by the later of (v) March

1 of the Year in question if the Statement was mailed prior to January 1 of the Year in question or (iv) sixty (60) days following the mailing of the statement if the statement was mailed subsequent to January 1 of the Year in question, the same shall be deemed delinquent. The Board shall use its best reasonable efforts to provide to each Owner the written statement of Annual Assessments provided for herein (a) for the Year in which these Covenants are first imposed upon the Owner's property, within ninety (90) days following such imposition, and (b) for each subsequent Year, prior to January 1 of each Year for which the Annual Assessment is being made; provided, however, that failure of the Board to provide such written statement within the time stated shall not in any manner affect the validity of such Annual Assessment, or the right to enforce the lien described in Section 4.03 hereof.

D. The annual Assessment assessed against an Assessable Lot for the Covenant Imposition Year shall be prorated based on the number of days remaining in such Year after the date of such imposition.

Section 3.02: Benefit Assessments.

- A. In addition to the powers and duties of the Board set forth in Section 3.01 above, the Board may, with the consent of each of the Owners of the Benefitted Area (hereinafter defined), undertake improvement projects and/or services that confer a special benefit on all or a definable part of the Property (the "Benefitted Area"), as determined by the Board in its sole reasonable good faith judgement. In order to pay for all or part of the costs of such improvements and/or services, the Board may levy and collect special assessments (Benefit Assessments) on all of the Property located within the Benefitted Area (including otherwise Exempt Property), pursuant to a written agreement executed by each Owner of the Property within the Benefitted Area and recorded in the Records of the applicable County.
- B. Prior to the due date of each Benefit Assessment or installment thereof, WCOA shall send a written statement of the Benefit Assessment to each Owner so assessed stating the amount and due date. Any Benefit Assessment or installment thereof not paid within sixty (60) days after the due date specified in the statement shall be deemed delinquent.

Section 3.03: User Fees.

A. The Board shall have the authority to charge fees ("User Fees") for the use of Community Facilities.

- B. User Fees shall be based only on the use of Community Facilities, and no Owner or Occupant shall be obligated for such User Fees solely because of their ownership or occupancy of a Lot.
- C. The Board in its sole reasonable good faith discretion may formulate classifications of users. User Fees must be uniform within each class but need not be uniform from class to class.
- D. All User Fees not paid within thirty (30) days after the obligor's receipt of Notice thereof shall be deemed delinquent.

Section 3.04: Purposes for Which Funds May Be Used.

All funds received by WCOA from Benefit Assessments shall be applied in accordance with the provisions of <u>Section 3.02</u>. WCOA shall apply all other funds received by it pursuant to these Covenants and all other funds and property received by it from any source, including the proceeds of the loans referred to in <u>Subparagraph 6.04(11)</u>, to the following:

- (1) the payment of ad valorem taxes when due on property owned by WCOA;
- (2) the payment of all principal and interest when due on all loans made to WCOA;
- (3) the repayment of all advances made by TWC to or on behalf of WCOA to the extent required under any agreement with TWC referred to in <u>Subparagraph</u> 6.04(12) hereof;
- (4) the operating costs and expenses of WCOA;
- (5) the payment of all organization costs and attorneys fees incurred by WCOA in preparing, adopting and imposing these Covenants (including repayment of all advances by TWC to or on behalf of the WCOA);
- (6) the establishment and maintenance of capital and operating reserves WCOA determines to be necessary or desirable; and
- (7) for the benefit of the Property, applying such funds to the costs of enforcement of these Covenants and the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation and subsidizing of any or all projects, services, facilities, studies, programs, systems and properties relating to the following

as the Board in its sole reasonable good faith discretion, may from time to time establish or provide:

parks and recreational facilities and services; drainage systems; streets, roads, highways, walkways, curbing, gutters, sidewalks, trees, flowers and landscaping, fountains, benches, shelters, directional and informational signs, walkways, bridges, and street, road and highway lighting facilities; facilities for the collection, treatment and disposal of garbage and refuse; transit systems, stations and terminals, airfields, airports, air terminals, and associated facilities; facilities for the fighting and prevention of fires; protective services, including contractual supplemental payments to law enforcement agencies; public utility systems; communication systems and facilities, including all buildings, systems, facilities or properties used or useful in connection with the operation of communication networks and facilities, towers, stations, cables, lines, ducts, equipment and appurtenances and all properties, rights, easements and franchises relating thereto; office buildings, storage and maintenance yards, garages and other buildings and facilities deemed necessary or desirable by the Board in connection with the administration, management, control and operation of WCOA; auditoriums, galleries, halls, amphitheaters, theaters, arenas and stadia, educational buildings and libraries, including books, supplies, equipment and accessories in connection therewith; hospitals and clinics, including equipment, medicines, supplies and accessories in connection therewith; traffic engineering programs and parking facilities; facilities for animal control and rescue; and any and all other improvements, facilities and services that the Board shall find to be necessary, desirable or beneficial for the advancement and in the best interest of the Property.

Section 3.05: Assessment Procedures.

The Board shall have the right to adopt and from time to time revise and amend procedures for the purpose of making the assessments provided herein and the billing and collection of the assessments and User Fees, provided such procedures are not inconsistent with the provisions hereof.

Section 3.06: Certification or Annual and Benefit Assessments.

Upon written request by an Owner, WCOA shall, within a reasonable period of time, issue to such Owner a written certificate stating, if true, that all Annual and Benefit Assessments (including interest and costs), and User Fees. have been paid with respect to any specified Lot; and if all Annual and Benefit Assessments and User Fees have not been paid, setting forth the amount of such Annual and Benefit

Assessments (including interest and costs thereon, if any) due and payable as of the date of the certificate. WCOA may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between WCOA and any bona fide purchaser or lender of the Lot specified in such certificate but shall not relieve the Owner of the Lot from its obligation if the certificate is in error.

Section 3.07: Abatement or Annual Assessments.

To encourage development and provide incentives for long term economic growth relative to the Property, the Board shall have the right, but not the obligation, to adopt an abatement policy and to enter into abatement agreements with Owners meeting the criteria established by the Board whereby the Annual Assessments against such Owner's Lot may be abated for up to ten (10) years if the Owner agrees in a written abatement agreement between Owner and WCOA to make improvements or repairs to its Lot or Improvements thereon in compliance with the terms and conditions of the Board's abatement policy. Any such abatement agreement shall not exceed ten (10) years and shall provide for the payment of all abated Annual Assessments if the Owner either fails to make the improvements or repairs provided for in the agreement or otherwise fails to comply with the abatement agreement or the assessment abatement policy adopted by the Board. Each Owner hereby acknowledges the authority and right of the Board to abate Annual Assessments pursuant to the provisions of this Section 3.07.

Section 3.08: Late Fee, Interest on Delinquent Annual Assessments and Benefit Assessments.

All delinquent Annual Assessments and Benefit Assessments shall bear interest at the Default Rate from the date they become delinquent until paid. Additionally, if Annual Assessments and/or Benefit Assessments are not paid on or before the date they become delinquent, then an additional amount of 5% of such Annual Assessments or Benefit Assessments (the "Late Fee") shall be immediately due and payable, provided that such Late Fee may be reduced or waived by WCOA for good cause. The Late Fee shall also bear interest at the Default Rate from the date it becomes due until paid. The Late Fee is assessed to compensate for the administrative costs and expenses of collection of the Annual Assessments and Benefit Assessments.

ARTICLE IV IMPOSITION OF CHARGE AND LIEN UPON PROPERTY

Section 4.01: Covenant to Pay Annual and Benefit Assessments and Conditions Creating Lien.

TWC covenants and agrees for each Lot within the Property, and each Owner of any Assessable Lot by acceptance of a deed therefor, or by entering into a contract of purchase with TWC whether or not it shall be expressed in any such deed, contract of purchase, or other conveyance, and each Owner of Exempt Property if it enters into a written agreement pursuant to Section 3.02A to pay a Benefit Assessment, unless specifically negated in such agreement, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration for the acquisition of the Lot so as to have affected the purchase price therefor):

- (1) That it will pay to WCOA the Annual and Benefit Assessments, and User Fees, if applicable, assessed by WCOA in each year; and
- (2) That the Annual and Benefit Assessments, the Late Fee, interest thereon, attorneys fees and other costs of collection, together with the continuing obligation to pay all future Annual and Benefit Assessments, shall be and remain a charge against, and a continuing lien upon their portion of the Property.

Except for liens securing the payment of ad valorem tax liens, the charges and liens herein created shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon each Assessable Lot (or the Exempt Property with respect to Benefit Assessments or to the extent that the same may later become an Assessable Lot) whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument.

Section 4.02: Owner's Liability for Payment or Assessments.

In addition to taking subject to the charge and lien imposed by Section 4.03 hereof, each Owner of each Assessable Lot or of Exempt Property if such Owner enters into a written agreement pursuant to Section 3.02A to secure payment of Benefit Assessments, by the acceptance of a deed therefor or by entering into a contract of purchase with TWC, whether or not it shall be so expressed in such deed or contract for purchase as part of the consideration therefor, shall be deemed to have covenanted, bargained and agreed to be personally liable for the payment of each Annual and Benefit Assessment which is assessed by WCOA during any period in which such Owner holds title to said Lot. In the event of a default in the payment of any such amount, the Owner shall be personally obligated to pay such past due

amounts, Late Fee and interest on such amounts at the Default Rate, together with all out of pocket costs and expenses of collection, including, but not limited to, reasonable attorneys' fees and court costs.

Section 4.03: Lien.

TWC, the Owner of each Assessable Lot, and each Owner of Exempt Property entering into a written agreement pursuant to Section 3.02A to secure payment of Benefit Assessments, hereby agrees for themselves and their respective administrators, executors, successors, assigns, and all subsequent Owners of such Lot or Exempt Property, or any portion thereof, as evidenced by acceptance of a deed to such property, to grant, and do hereby grant, to G. David Bumgardner, as Trustee, for the benefit of WCOA, and to any and all substitute trustees from time to time appointed by WCOA (the "Trustee"), a first lien upon such Lot or Exempt Property or any portions thereof, plus all Improvements thereon, to secure the payment of all Annual and Benefit Assessments accruing or becoming due hereunder upon said Assessable Lot or Exempt Property, together with the costs of collection including reasonable attorneys' fees, interest at the Default Rate, and the Late Fee. Such Owners hereby agree that such lien shall be a covenant running with the title to such Lot, Exempt Property and Improvements. Each such Owner further hereby agrees that in the event any Annual or Benefit Assessment is not paid within sixty (60) days after Notice of delinquency, then, after the mailing, filing and posting of written notice of foreclosure of this lien in the places and in the manner provided by the Statutes, and otherwise complying with the Statutes, the Trustee or substitute trustee for WCOA may proceed to sell such Assessable Lot or Exempt Property and Improvements thereon, at public auction in accordance with such notices and at such place and time prescribed by the Statutes, to the highest bidder for cash for the recovery of such past-due Annual and/or Benefit Assessments, the Late Fee, attorneys fees, costs of collection and all interest accrued thereon until collected. The proceeds of any sale of any Lot foreclosed pursuant to the provisions of this Section 4.03 shall be applied, to the extent funds are so available therefrom, as required by the Statutes, and to the extent not so required in any order of priority WCOA shall elect. At any sale made hereunder, WCOA shall have the right to bid and become the purchaser, if making the highest bid, and credit upon such bid all or any part of the unpaid Annual Assessments, Benefit Assessments. Late Fee, attorneys fees, costs of collection and all interest accrued thereon until collected.

WCOA is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without formality other than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively and each substitute and successor trustee shall succeed to all of the rights and powers of the original Trustee named herein.

To the maximum extent permitted by applicable law, each Owner hereby waives any right to a determination of fair market value and to an offset against any deficiency resulting from a foreclosure sale of any Lot (or any portion thereof) pursuant to Section 51.002 of the Texas Property Code, or pursuant to a judicial foreclosure, including, without limitation, any such rights that Owner may otherwise have had under Section 51.003 and/or Section 51.004 of the Texas Property Code.

Section 4.04: Remedies of WCOA in the Event or Default.

If any Annual or Benefit Assessment is not paid by the delinquent dates established for payment pursuant to <u>Article III</u> hereof, the Board shall have the right to pursue any and/or all remedies available to WCOA, at law or in equity, to enforce payment of the Assessments including. without limitation, the following:

- (1) bring an action at law against the Owner or Owners personally obligated to pay the Annual and/or Benefit Assessment together with any Late Fees, interest, costs and reasonable attorneys' fees of any such action;
- (2) furnish to any mortgage holder and file in the Records of the applicable County, a notice of lien against the Lot for which the Annual and/or Benefit Assessment is delinquent;
- (3) authorize and direct the foreclosure of the lien provided for in Section 4.03 above against the Lot and Improvements for which such Annual and/or Benefit Assessment is delinquent in the manner provided for in Section 4.03 above; and/or
- (4) bring an action for judicial foreclosure of the lien provided for in <u>Section 4.03</u> above in any manner prescribed by law.

ARTICLE V COMMUNITY FACILITIES

Section 5.01: Establishment and Use of Community Facilities.

WCOA shall have the right, from time to time, to acquire lands and/or construct structures and other facilities and designate portions of such lands, structures and other facilities for use by each Owner for park, recreational or other community purposes on the terms and conditions established by WCOA. The lands, structures and other facilities WCOA designates from time to time for use by each Owner for park, recreational or other community purposes shall hereinafter be referred to as "Community Facilities".

Every Owner, by reason of its ownership of title to a Lot, shall have a revocable license to use and enjoy all Community Facilities, and such revocable license shall be appurtenant to and shall pass with every Lot upon transfer. Subject to compliance with these Covenants by the Occupant and the Owner from whom the Occupant derives its rights hereunder, each Occupant (who is not an Owner) shall also have a revocable license to use and enjoy all Community Facilities for so long as they are Occupants. The revocable license granted herein to Owners and Occupants shall be subject to the right of WCOA to adopt and promulgate reasonable rules and regulations pertaining to the use of Community Facilities which enhance the preservation of the Community Facilities, the safety and convenience of the users thereof, or which, in the good faith reasonable discretion of the Board, serve to promote the best interests of all the Owners of the Property.

Section 5.02: Suspension of Rights.

WCOA shall have the right to temporarily revoke the license of any Owner under this Article V for any period during which the payment of such Owner's Annual or Benefit Assessment remains delinquent or such Owner's User Fees and charges imposed pursuant to Section 3.03 remain unpaid. WCOA shall also have the right to suspend and temporarily revoke the license of any Occupant under this Article V for any period during which the Owner's Annual Assessment or Benefit Assessment remains unpaid with respect to the portion of the Property occupied by such Occupant. WCOA shall further have the right to suspend the license of any such Owner or Occupant in connection with the enforcement of any rules and regulations relating to Community Facilities in accordance with the provisions of this Article V.

Section 5.03: Right to Enjoyment of Land.

Any guest or invitee of an Owner or an Occupant shall also have a revocable license to enjoy the Community Facilities subject to such regulations as may be promulgated by the Board.

ARTICLE VI THE WOODLANDS COMMERCIAL OWNERS ASSOCIATION

Section 6.01: Governing Provision.

TWC has caused WCOA to be incorporated under the laws of the State of Texas. WCOA shall be governed by the WCOA Articles and the WCOA By-laws which shall be consistent with the terms and conditions of these Covenants, and these Covenants shall prevail over any inconsistencies between these Covenants, the WCOA Articles or the WCOA By-laws, to the extent permitted by applicable law.

Section 6.02: Members.

- A. All Owners shall automatically be Members of WCOA. Each Assessable Lot shall entitle its Owners, collectively, to one (1) vote for each \$10,000.00 of the Assessed Valuation of such Lot according to the most recent determination of the Assessed Valuation under Section 3.01 above, rounded to the nearest whole number. Each Lot that is Exempt Property shall entitle its Owners, collectively, to one vote. The Owner or Owners of an Assessable Lot shall always be entitled to at least one (1) vote for each Lot, regardless of the Assessed Valuation of the Lot.
- B. Natural persons must be eighteen (18) years of age or over to be entitled to vote. In the event any Lot is jointly owned by two or more Persons, the Owners of such Lot shall collectively be entitled only to the number of votes allocated to such Lot in this Section 6.02 above, regardless of the number of Owners of such Lot, and the Owners shall determine how such votes are allocated among such Owners. The membership books will be closed and adjustments in each Member's voting rights will be made on the above basis by the Board sixty (60) days prior to each annual meeting of the Members, and thirty (30) days prior to each special meeting or any other proposed action requiring the vote of the Members. WCOA may suspend the voting rights of any Member for any period during which the Annual or Benefit Assessment against the Members Lot remains delinquent as provided in Article III hereof.
- C. The Board may make and adopt, from time to time, as it deems advisable for any meeting of the Members, regulations and rules consistent with the terms of these Covenants, the WCOA Articles and the WCOA By-laws regarding (i) evidence of the right to vote, (ii) the appointment and duties of inspectors of votes, (iii) voting procedures, (iv) registration of Members for voting purposes, and (v) such other matters concerning the conduct of meetings and voting as the Board shall deem appropriate in its sole reasonable good faith discretion.

Section 6.03: Board of Directors.

- A. Until the first annual meeting of the Members following August 1, 2003, the Board of Directors shall consist of five Directors who shall be appointed by TWC. Thereafter, the Board of Directors shall consist of the following:
 - (1) Until the first annual meeting of the Members following August 1, 2013, the Board of Directors shall consist of five Directors, four of whom shall be appointed by TWC and one of whom the Members shall elect.

- (2) Thereafter, until the first annual meeting of the Members following August 1, 2023, the Board of Directors shall consist of seven Directors, five of whom shall be appointed by TWC and two of whom the Members shall elect.
- (3) Thereafter, until the first annual meeting of the Members following August 1, 2033, the Board of Directors shall consist of nine Directors, six of whom shall be appointed by TWC and three of whom the Members shall elect.
- (4) Thereafter, until the first annual meeting of the Members following August 1, 2043, the Board of Directors shall consist of nine Directors, five of whom shall be appointed by TWC and four of whom the Members shall elect.
- (5) Commencing with the first annual meeting of the Members following August 1, 2043, the Board of Directors shall consist of five Directors, all of whom shall be elected by the Members.
- B. The terms of all Directors shall be two (2) years unless otherwise provided in the WCOA Articles or the WCOA By-laws.
- C. The Board may make and adopt, from time to time, as it deems advisable, regulations and rules consistent with the terms of these Covenants regarding voting procedures and such other matters regarding voting and the conduct of meetings as The Board shall deem appropriate in its sole reasonable good faith discretion. Vacancies for elected Directors shall be filled according to the WCOA By-laws. Vacancies for Directors appointed by TWC shall be filled by a new appointment by TWC. TWC may relinquish its right to appoint one (1) or more Directors by providing Notice of such relinquishment to the Board. In the event of such relinquishment by TWC, the Members shall thereafter elect the Directors for the positions so relinquished by TWC. In the event TWC shall cease to exist without assigning its rights under these Covenants to another Person as provided in Section 16.06, all Directors shall thereafter be elected by the Members.

Section 6.04: Powers and Duties.

WCOA shall have the following powers and duties (subject to the terms and conditions set forth in these Covenants) which may be exercised by the Board within its reasonable discretion:

(1) To acquire, own, develop, improve, operate, maintain and regulate the use of, and to sell, transfer, convey, mortgage and grant easements and other rights

- in and to, land, and designate, from time to time, all of portions or such land as Community Facilities;
- (2) To employ counsel and institute and prosecute such suits as the Board may deem necessary or advisable, and to defend suits brought against WCOA or its Directors, officers and/or employees for acts performed or not performed in their capacity as Directors, officers or employees of WCOA;
- (3) To employ from time to time such agents, servants, and laborers as the Board may deem necessary in order to exercise the powers, rights, privileges and duties of WCOA;
- (4) To maintain insurance on or related to the Community Facilities or other property owned by WCOA, and for WCOA and its Directors, officers and employees;
- (5) To provide, contract for, or otherwise cause to be provided such services and facilities permitted under <u>Section 3.04</u> as the Board shall determine from time to time to be in the best interests of the Property;
- (6) To purchase and pay for all goods and services required or needed by WCOA;
- (7) To fix, levy, and collect Annual and Benefit Assessments pursuant to <u>Article III hereof</u>;
- (8) To enforce the provisions of these Covenants including, without limitation, Section 4.03 regarding liens;
- (9) To acquire, construct, exchange, abandon, own, develop, install, maintain, operate, repair, replace, include or remove from utility districts or other similar designations, lease, sell, donate and otherwise dispose of real property, equipment, machinery, buildings and other facilities as the Board may deem necessary in order to exercise the powers, rights, privileges and duties of WCOA;
- (10) To make and enter into contracts, use agreements, easements, reciprocal easement agreements and other agreements as the Board may deem necessary to exercise the powers, rights, privileges and duties of WCOA including, without limitation, reciprocal easement agreements with other community associations and governmental entities serving The Woodlands to provide for reciprocal use of Community Facilities by their respective members and other Persons entitled to the use thereof;

- (11) To borrow funds from time to time in such amounts and upon such terms and conditions as the Board may determine and, in order to secure the repayment thereof, the Board is hereby granted the right and power to:
 - (a) assign and pledge revenues received, and to be received by it, under any provision of these Covenants, including, but not limited to, the proceeds of the Annual and Benefit Assessments payable hereunder;
 - (b) enter into agreements with Note Holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein WCOA covenants to:
 - (i) assess the Annual and Benefit Assessments on a given day in each Year and, subject to the limitation on amount specified in Article III, to assess the same at a particular rate or rates;
 - (ii) establish sinking funds and/or other security deposits;
 - (iii) apply funds received by WCOA to the payment of all principal and interest, when due, on such loans, or to apply the same to such purpose after providing for costs of collection;
 - (iv) establish such procedures as may be required by the Note Holders, but not inconsistent with these Covenants; and
 - (v) provide for the custody and safeguarding or all funds received by WCOA;

and,

- (c) grant liens on Community Facilities and any other property owned by WCOA;
- (12) To enter into agreements with TWC for the advancement of funds by TWC to or on behalf of WCOA and the repayment of such funds upon such terms and at such interest rate as the Board and TWC may determine;
- (13) To establish User Fees pursuant to <u>Section 3.03</u> hereof;
- (14) To sell, acquire, construct, exchange, abandon, own, develop, install, maintain, operate, repair, replace, include or remove from utility districts or other similar designations, lease, sell, donate, and otherwise dispose of Community Facilities and to change the designation of Community Facilities so that land

and improvements formerly designated as Community Facilities by WCOA may be used for other purposes;

- (15) To abate Annual Assessments pursuant to <u>Section 3.07</u> hereof;
- (16) To promulgate, amend and enforce rules and regulations necessary or desirable to enforce these Covenants or to maintain the current or future general development scheme and standards being implemented, or to be implemented, by TWC for The Woodlands;
- (17) To open and maintain bank accounts; and
- (18) To conduct any other activity within the terms and conditions set forth in these Covenants or allowed under the Texas Non-Profit Corporation Act.

ARTICLE VII COVENANTS FOR MAINTENANCE

Section 7.01: Maintenance by Owner.

The Owner and Occupant of each Lot each agree to maintain such Lot and all Improvements thereon in good order and repair, including, but not limited to:

- (1) prompt removal of all litter, trash, refuse and waste;
- (2) tree and shrub pruning as needed for the maintenance of the health of all trees;
- (3) fertilizing, mowing, watering, weeding and replacement as necessary to maintain all landscaping and vegetation;
- (4) prompt removal of fallen or uprooted trees, branches or shrubs and repair of other damage to trees or large shrubs caused by storms or high winds;
- (5) keeping all parking areas, driveways, sidewalks and roads free from trash and litter, attractive and in good condition;
- (6) complying with all applicable laws, rules and regulations of any governmental or quasi-governmental agency or authority;
- (7) striping and restriping, as needed, of all parking areas and maintenance of the surface of all parking areas in good repair;

- (8) exterior maintenance of all Improvements in a manner and with such frequency as is consistent with good property management;
- (9) prompt repair of damage to Improvements; and
- (10) any other maintenance or repair item the Board in its sole reasonable good faith discretion, deems necessary or desirable.

If in the good faith reasonable judgment of the Board, a violation or breach of the provisions of this Section 7.01 has occurred or is occurring, WCOA shall send Notice to the Owner of the Lot involved. The Notice shall also be sent to the Occupant of such Lot, if different from the Owner, mailed to the address of the Lot or such other address as the Occupant may have previously furnished to WCOA for the purpose of mailing Notices. The Notice shall set forth the specific violation or breach of the provisions of this Section 7.01 and the action required to be taken to cure such violation or breach. If the Owner or Occupant does not commence such curative action within fifteen (15) days from the Effective Date of the Notice and thereafter continue to diligently pursue such curative action until completed, then WCOA shall send a second Notice to the Owner and Occupant (in the manner set forth in this Section 7.01) and if the Owner or Occupant does not commence such curative action within fifteen (15) days from the Effective Date of such second Notice and thereafter continue to diligently pursue such curative action until completed, then WCOA may take the action specified in the Notice to cure the violation or breach. The Owner of the Lot on which the work is performed shall be liable for the cost of the work (including reasonable legal and administrative fees) and shall promptly reimburse WCOA for such cost upon demand. Any such costs not paid to WCOA within thirty (30) days following the date of demand therefor shall be delinquent. Delinquent payments shall bear interest at the Default Rate until paid. The obligations under this Article VII are secured by the lien granted in Article IV above, on the terms and conditions set forth therein. Nothing contained herein shall limit or otherwise affect the rights of the Owners, WCOA or TWC to pursue any other remedies available to them, at law or in equity.

ARTICLE VIII COMMUNITY STANDARDS COMMITTEE

Section 8.01: Organization of Community Standards Committee.

The Community Standards Committee (hereinafter referred to as the CSC), shall be comprised of no less than three (3) but not more than seven (7) individuals appointed from time to time by TWC.

Section 8.02: Establishment and Amendment of Rules and Policies.

The CSC may from time to time, in its sole reasonable good faith discretion, promulgate rules and regulations governing the improvement of Lots including, without limitation, rules and regulations which: (a) implement the provisions of these Covenants; (b) establish the form and content of plans and specifications for, and inspection of, specific Improvements; (c) govern activities and uses of Lots and Improvements that cause, permit or result in the emission beyond the boundary of any Lot of any sound, vibration, dust, air or water pollutant or contaminant, odor, glare, smoke, gas, fume, radiation, radioactivity, electromechanical or electromagnetic disturbance or radiation, or any other emission that unreasonably and materially interferes with the use and enjoyment of adjacent property; (d) govern the method, procedures, qualifications and requirements for parties constructing any Improvements; (e) establish architectural guidelines and standards; and (f) provide for implementation and enforcement of any of the foregoing. The CSC may revoke or revise such rules and regulations at any time in its sole discretion.

It shall be the responsibility of each applicant to be informed of the current rules and regulations and statements of policy promulgated by the CSC and all amendments thereto and revocations and revisions thereof, as of the date of application for CSC consideration. Failure by the applicant to be so informed shall not bind the CSC to approve or disapprove any feature or matter submitted to the CSC, or to waive the exercise of the CSC's discretion as to any such matter. Approval of any plans or specifications for a Lot shall not be deemed a waiver of the CSC's right to disapprove such plans or specifications, or any of the features, or elements included therein, if such plans, specifications, features, or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specifications relating to any Lot, however, shall be final and non-appealable as to that Lot, but shall in no way bind the CSC with respect to approval of plans and specifications for any other Lot. Except as provided in Section 8.07, any such approval may not be revoked or rescinded thereafter, provided that:

- (1) the Improvements or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in these Covenants; and
- (2) the plans and specifications, as approved, and any condition attached to any such plans and specifications, have been adhered to and complied with in regard to all Improvements on, and uses of, the Lot.

All such rules and regulations shall be in the best interest of the Property as determined by the CSC in its sole reasonable good faith discretion. Copies of rules

and regulations and statements of policy shall be made available on request to Owners, Occupants and their designees.

Section 8.03: Codes.

The CSC may promulgate rules and regulations pursuant to <u>Section 8.02</u> which include codes governing safety and construction of Improvements on the Property.

Section 8.04: Operations of the CSC.

A majority of the members of the CSC shall be required for a quorum and the affirmative vote of a majority of a quorum shall be required to:

- (1) adopt, promulgate, revise or revoke any rule or regulation;
- (2) make any finding, determination, ruling or order;
- (3) issue any permit, authorization or approval pursuant to directives or authorizations contained herein; or
- (4) act upon any other business properly before the CSC.

The CSC may make and adopt from time to time, as it deems advisable, regulations and rules consistent with the terms of these Covenants regarding voting procedures and such other matters regarding voting and the conduct of meetings as the CSC shall deem appropriate in its sole reasonable good faith discretion.

Section 8.05: Construction and Alteration of Improvements.

No Improvement shall be commenced, moved, erected, placed, moved onto, or permitted to remain on any Lot, nor shall any existing Improvement upon any Lot be remodeled, enlarged or otherwise altered, nor shall any new use be commenced on any Lot unless complete plans, specifications and descriptions of the proposed Improvement or use shall have been submitted to and approved in writing by the CSC. Such plans and specifications shall be in the form and contain the information required by the CSC, but in any event shall include:

(1) a complete set of construction plans and specifications, or plans and specifications satisfactory to the CSC, certified to be in compliance with all applicable codes, laws, ordinances, rules and regulations by the designing architect or other person acceptable to the CSC, in its sole discretion;

- a site plan of the Lot showing, with regard to all proposed Improvements, the nature, exterior color scheme, kind, shape, height, proposed construction and landscaping materials, location of all existing and proposed Improvements with respect to the particular Lot (including all easements and any proposed front, rear and side setback and open spaces), location with respect to Improvements on adjoining Lots, and the number and location of all parking spaces and driveways on the Lot;
- (3) a grading, clearing and drainage plan for the particular Lot; and
- (4) a full and complete description of the intended use of the Lot.

Section 8.06: Disapproval of the Plans by CSC.

The CSC has the sole and absolute right and authority pursuant to these Covenants to disapprove plans for any and all Improvements to be constructed on the Property (i) if in the reasonable good faith judgment of the CSC the work contemplated by the plans is not consistent with the best interest of the Property and the current or future general development scheme being implemented, or to be implemented, by TWC or (ii) for any reason set forth in these Covenants and any and all rules and/or regulations promulgated pursuant to these Covenants including, without limitation, the reasons set forth in Section 9.02 of these Covenants and the following:

- (1) a determination by the CSC, in its reasonable good faith discretion, that the proposed Improvement is not desirable and does not enhance The Woodlands;
- (2) failure of such plans or specifications to comply with any of the restrictions or provisions of these Covenants;
- (3) failure to include such information as may reasonably have been requested by the CSC;
- (4) failure to comply with any of the rules and regulations promulgated pursuant to these Covenants;
- (5) objection to the exterior design, appearance or materials of any proposed Improvement;
- (6) incompatibility of any proposed Improvement or use with existing Improvements or uses upon that or other Lots;

- (7) objection to the location of any proposed Improvement upon any Lot (including whatever setbacks the CSC deems desirable) or with reference to other Lots;
- (8) objection to the grading, clearing or drainage plan for any Lot;
- (9) objection to the color scheme, finish, proportions, style of architecture, height, bulk, safety or appropriateness of any proposed Improvement;
- (10) objection to the parking areas proposed for any Lot on the grounds of:
 - (a) incompatibility with proposed uses and Improvements on the Lot; or
 - (b) insufficiency of the size of the parking area in relation to the proposed use of the Lot.
- (11) objection to the landscaping plan for any Lot; or
- (12) any other matter which, in the sole reasonable good faith judgment of the CSC, would render the proposed Improvements or uses incompatible with the general plan of Improvement of the Property or with Improvements or uses upon other Lots.

The CSC shall promptly review all plans submitted to it and advise the applicant whether the plans are approved, rejected, conditionally approved or held pending receipt of further information. The CSC shall have the right to approve any part or portion of plans submitted for its approval.

If the CSC fails to approve or disapprove plans or specifications or to reject them as being inadequate within thirty (30) days after submission of: (i) all materials, documents and related information required by the rules and regulations which have been promulgated by the CSC for the approval of plans pursuant to these Covenants; and (ii) all fees required to be paid by the applicant, it shall be conclusively presumed that the CSC has disapproved such plans and specifications. The CSC shall have no right or power either by action or failure to act to waive or grant any variance to any authority specifically reserved to TWC or WCOA in these Covenants.

Section 8.07: Commencement and Completion of Construction.

If the Owner does not commence construction of the Improvements within one (1) year after approval of the plans by CSC, such approval shall terminate.

After commencement of construction of any Improvement, the applicant shall diligently prosecute the work thereon, and shall cause the Improvement to be

completed as soon after commencement of construction as a reasonably prudent builder would cause the same to be completed under the same or similar circumstances. The CSC shall have the right to set forth in its approval of the plans a period of time in which the work contemplated by any plans and specifications must be completed. Acceptance of any approved plans with a deadline for substantial completion of the Improvements described in the plans so approved shall constitute an agreement by such applicant that a violation of the foregoing time restrictions shall constitute a violation of these Covenants.

Section 8.08: Subdivision of Platted Lots.

No Lot which has been platted pursuant to a subdivision plat recorded in the map or plat records in the office of the Clerk of the applicable County shall be subdivided or otherwise replatted by any Owner thereof without the prior written consent of the CSC.

Section 8.09: Filing of Approved Plans.

Upon approval by the CSC of any plans and specifications, a copy of such plans and specifications on which the approval is clearly marked shall be deposited with the CSC. A copy of approved plans and specifications on which the approval is clearly marked shall be returned to the applicant.

Section 8.10: CSC Right of Entry.

The CSC may also adopt rules and regulations requiring inspection of Improvements at various stages of construction, either by the CSC or a qualified building inspector retained by the Owner and acceptable to the CSC. During construction of any Improvements on a Lot, CSC and their agents are hereby granted a license and right to enter upon and inspect any Lot and any Improvements thereon during regular business hours. Following completion of construction the CSC and their agents are hereby granted a license and right to enter upon and inspect any Lot and any Improvements thereon during regular business hours and following Notice. Any such inspection shall be for the purpose of ascertaining whether or not such Lot and/or the Improvements thereon are in compliance with these Covenants, any rules or standards promulgated by the CSC and any plans approved by the CSC. Neither TWC nor the CSC shall have any duty or obligation to inspect the Lot or Improvements. Any inspection by or on behalf of the CSC shall be solely for the use of the CSC and shall not be relied on by any Person as approval or acceptance of any Improvement by the CSC.

Section 8.11: Owner's Certificate and Certificate of Compliance of an Improvement.

Upon completion of an Improvement, the Owner shall furnish to the CSC a written certificate by the architect, inspector or other Person acceptable to the CSC in accordance with the rules and regulations promulgated by the CSC (the "Owner's Certificate"), certifying that the Improvement complies with the plans and specifications approved by the CSC and with all applicable laws. No improvement shall be occupied or used until the Owner's Certificate is furnished to the CSC. If (i) CSC is satisfied with the certificate furnished by the Owner, and (ii) CSC does not otherwise have knowledge of any violation of these Covenants with regard to the Lot in question, then, upon written request by the Owner of the Lot, the CSC shall issue a certificate of compliance (the "Certificate of Compliance"), based solely on the certificate furnished by the Owner. The Certificate of Compliance shall identify the Lot and the Improvement, the plans and specifications on file with the CSC pursuant to which the Improvement was erected or made, and shall specify that the Improvement complies with the approved plans and specifications. The Certificate of Compliance shall not be construed to certify the acceptability, sufficiency or approval by the CSC of the construction, design or use of the Improvement or of the workmanship or materials thereof; provided, however, that a Certificate of Compliance issued in accordance with this <u>Section 8.11</u> shall be prima facie evidence of the facts stated therein. The Owner and all parties reviewing the Certificate of Compliance are hereby notified that the Certificate of Compliance in no way warrants the sufficiency, acceptability, or approval by the CSC of the design, construction, workmanship, materials or equipment of any Improvement upon the Lot or use thereof. The waiver of liability contained in Article XV of these Covenants shall apply to the issuance of a Certificate of Compliance by the CSC or a failure by the CSC to issue any such Certificate of Compliance.

Section 8.12: Fees for Examination of Plans and Specifications.

The CSC may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to these Covenants. The CSC shall have the right to employ engineers, attorneys, architects and other professionals or consultants to assist the CSC in the evaluation of any plans and specifications submitted for approval and may charge the Owner submitting such plans and specifications the cost incurred by the CSC in connection with the employment of any such professionals or consultants. Any such charge levied by the CSC shall be in accordance with the fee schedule adopted by the CSC and then in effect and shall be due and payable when plans are submitted for review to the CSC.

Section 8.13: Violation of Article VIII.

If any Improvement shall be erected, placed or maintained on any Lot other than in accordance with plans and specifications approved by the CSC, such Improvement shall constitute a violation of these Covenants. Upon Notice from the CSC any such Improvement shall promptly be removed or corrected so as to extinguish the violation. The CSC may approve a violation existing under the provisions of this <u>Article VIII</u> by issuing a written approval of the Improvement in question.

Section 8.14: Enforcement.

If an Owner or Occupant of a Lot upon which a violation exists does not (a) commence such curative action within fifteen (15) days from the Effective Date of the Notice to the applicable Owner and Occupant and thereafter continue to diligently pursue such curative action until completed, and (b) notify the CSC of the commencement of the curative action being taken within fifteen (15) days of such Notice to the Owner and Occupant specifying the violation of these Covenants, then (i) WCOA or the CSC may enter upon such Lot during regular business hours and take such steps as were specified in the Notice to extinguish the violation of these Covenants, or (ii) WCOA, the CSC or any other Owner may pursue any remedies available hereunder or at law or in equity. The cost of any curative action taken by WCOA or the CSC shall be (i) a binding, personal obligation of the Owner of the Lot upon which the violation exists, (ii) payable on demand, and (iii) secured by the lien granted in Article IV above, on the terms and conditions set forth therein.

Section 8.15: Generality not Affected by Specificity.

The generality of this <u>Article VIII</u> shall not be in any manner altered, affected or diminished by the specific restrictions as to the type and location of certain Improvements, hereinafter provided for.

ARTICLE IX GENERAL COVENANTS AND RESTRICTIONS

Section 9.01: Water Wells.

No well, pump, shaft, casing or other facilities for the removal of subsurface water shall be placed or maintained on any Lot, and no boring, drilling, removal of, or exploitation for, subsurface water or the injection of water or waste water shall be conducted on any Lot, except by or with the written consent of the CSC.

Section 9.02: Clearing Restrictions.

No living tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot without the express written authorization of the CSC. The CSC may mark certain trees, regardless of size, as not removable without written authorization from the CSC. The CSC shall have the right to designate forest preserves on each Lot within which no clearing, excavation, paving, storage of materials, or Improvements may be conducted or placed except for (i) utilities; (ii) pathways; (iii) streets and driveways; and (iv) signs, each as permitted by the CSC. The CSC and its agents or designees may come upon any Lot during reasonable hours for the purpose of inspecting and marking trees. The CSC and its agents or designees are hereby granted a license and right to enter upon and inspect any Lot in accordance with the provisions of this Section 9.02.

Section 9.03: Placement or Signs on Property.

No sign or advertising device of any nature shall be placed upon any Lot or Improvements without the approval of the CSC. The CSC may in its sole reasonable good faith discretion adopt and promulgate rules and regulations relating to signs which may be used within the Property.

Section 9.04: Disposition of Trash and Other Debris.

No lumber, metals, bulk materials, refuse, trash or other unsightly items shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction for a period not to exceed eighteen (18) months (commencing with the date of the first delivery of materials for construction purposes) for any approved Improvement, unless such materials are visually screened in a manner approved in writing by the CSC. During the course of construction, it shall be the responsibility of each Owner and Occupant to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks and the like are kept in a neat and orderly manner. No accumulation or storage of litter or trash of any kind shall be permitted on any Lot. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open only on any day that a pickup is to be made, at such place on the Lot so as to provide access to persons making such pickup. At all other times such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding Lots. The CSC in its reasonable good faith discretion may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on the Property.

Section 9.05: Placement of Pipelines.

Except for the point of connection for building service and except for moveable hoses and pipes used for irrigation purposes, no water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, without the prior written consent of the CSC.

Section 9.06: Mining.

No Lot or portion thereof shall be used for any mining, boring, quarrying, drilling, removal or exploitation of subsurface or surface natural resources, including removal of sand, topsoil, gravel or any other natural resource, or the injection of water or wastewater, except for areas specifically designated for such purposes by the CSC.

Section 9.07: Fireworks and Use of Firearms.

The sale or use of fireworks, of any kind whatsoever, and the use or discharge of firearms, air rifles, pistols, pellet guns or similar devices, is prohibited, except by written permit granted to individuals by WCOA. Hunting of any kind, and by any method, including but not limited to firearms, air rifles and pistols, pellet guns, traps, snares, bow and arrows, or manually propelled missiles is prohibited, except by written permit granted to individuals by WCOA. If such permits are granted, WCOA may set aside certain specifically delineated areas for these activities, which must be conducted in accordance with the permit and all applicable federal, state and local laws.

Section 9.08: Use Restrictions.

Subsequent to the recordation of these Covenants in the appropriate Records, but prior to the sale of a particular Lot to a third party, TWC shall have the right to adopt and impose restrictions limiting the uses of such Lot (the "Use Restrictions"). The Use Restrictions shall be made by plats, deeds, covenants or other instruments filed or to be filed in the Records of each applicable County. Notwithstanding anything contained in these Covenants to the contrary, the Use Restrictions may be amended as to any Lot as TWC and the current Owner or Owners of that Lot may determine in their sole discretion. The Use Restrictions shall only be enforceable by TWC and may not be enforced by Owners, Occupants or any other Person unless and until such right of enforcement is specifically assigned by an instrument filed in the Records of each applicable County.

Section 9.09: Prohibition of Nuisances.

No portion of the Property shall ever be used for any purpose that is a nuisance or is otherwise noxious or offensive.

Section 9.10: Keeping of Animals on Lots.

Except for customary household pets, no animals shall be kept or maintained on any Lot or within any Improvements thereon unless specifically authorized in writing by CSC. No animal shall be allowed or permitted on any portion of the Property except the Lot of its owner unless same shall be under the control of its owner or another Person by leash, rope, chain or other restraining device. No animal shall be allowed on any Lot without the permission of the owner of that Lot. CSC shall have authority to seize and impound, or cause to be seized or impounded, any animal on the Property in violation of this Section 9.10 or the regulations established hereunder. CSC shall have authority to impose reasonable fees for animal registration or other animal control services, and to impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot, and providing a method for disposing of animals which are unclaimed after a reasonable period of time. No dog or cat over six months of age shall be kept by any Owner or Occupant unless such animal shall have a current rabies inoculation.

Section 9.11: Parking.

The CSC shall have the authority to adopt reasonable rules and regulations regarding the parking of motor vehicles. Any rules and regulations adopted by the CSC for parking on or adjacent to Residential Lots shall conform to the provisions of Section 10.03 and shall be supplemental and in addition to the provisions of Section 10.03. No motor vehicle may be parked on any street within the Property by any Owner or Occupant or their respective guests and invitees in violation of the rules and regulations adopted by CSC or the provisions of Section 10.03.

ARTICLE X RESIDENTIAL PROTECTIVE COVENANTS AND RESTRICTIONS

Section 10.01: Residential Provisions.

TWC may from time to time restrict portions of the Property for residential purposes in accordance with <u>Section 9.08</u> hereof. The following provisions of this <u>Article X</u> shall apply solely to Residential Lots but all of the other provisions of these Covenants shall also apply to Residential Lots.

Section 10.02: Utilities.

No facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Residential Lot and no external or outside antennas or satellite dishes of any kind shall be placed on a Residential Lot except as approved in writing by the CSC.

Section 10.03: Truck, Trailer, Recreational Vehicle and Boat Parking.

No trailer, trailer house, recreational vehicle, mobile home, boat, semi-truck tractor or trailer, or other truck with a licensed capacity in excess of one ton shall be parked on any street within the Property or brought upon or parked on any Lot except in an enclosed structure or other manner which does not permit it to be seen at ground level from adjacent property or an abutting street. This shall not be construed to prohibit the mere temporary standing or parking of any such vehicle for short periods preparatory to taking same to some other location for use or storage. Nothing contained herein shall be considered to prohibit the use of portable or temporary buildings or trailers as field offices by contractors during construction in The Woodlands, provided that the use and appearance of such a building or trailer has been approved by the CSC prior to its being moved on site.

Section 10.04: Temporary Buildings Restrictions.

No temporary building, trailer, tent, garage, or building in the course of construction shall be used, temporarily or permanently, as a residence on any Residential Lot.

Section 10.05: Profession or Home Industry.

No business, profession or home industry or any other non-residential use that results in increased traffic or is otherwise an inappropriate or undesirable use of residential property, as determined by the CSC in its reasonable good faith discretion, shall be conducted in or on any part of a Residential Lot or in any Improvement thereon without the specific written approval of the CSC.

Section 10.06:Lot Use for Model Home or Real Estate Office.

All else herein to the contrary notwithstanding, with the prior written approval of the CSC, which may be withheld by the CSC in its sole reasonable good faith discretion, any Residential Lot may be used for a builder's sales office for TWC or a builder, provided such use shall not unreasonably interfere with the right of quiet enjoyment of any Owner or Occupant.

ARTICLE XI EASEMENTS

Section 11.01: Rights Concerning Easements and Rights-of-Way.

Easements and rights-of-way across each Lot are hereby expressly reserved to TWC in, on, over, and under the Easement Area for the following purposes, among others:

- (1) for the installation, construction, maintenance, operation, replacement and removal of:
 - (a) wires, lines, conduits and the necessary or proper attachments in connection with the transmission of electricity, telephone, community antenna television cables and other utilities and similar facilities; and
 - (b) storm-water drains, land drains, public and private sewers, pipe lines for supplying gas, water and heat, and for any other public or quasi-public utility facility, service or function, whether above ground or underground;

and,

(2) for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios approved by TWC or which might create erosion or sliding problems, or which might change, obstruct or retard drainage flow.

TWC and its designees shall have the right at reasonable times to enter upon all parts of the Easement Area for any of the purposes for which said easements and rights-of-way are reserved. TWC or its designees shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of this <u>Section 11.01</u>.

Except with the written approval of TWC, nothing shall exist or be placed on, over or above any portion of the Easement Area. TWC or its designees may clear the Easement Area of all structures, trees, bushes and other growth, including any overhanging branches or protrusions from structures located upon adjacent Lots, provided that TWC or its designees shall comply with the provisions of Section 9.02 regarding removal of trees.

Section 11.02: Definition of "Easement Area."

The term "Easement Area" as used herein, shall mean and refer to a strip of land within each Lot ten (10) feet in width along and adjacent to the entire distance of the front and rear boundaries of the Lot and five (5) feet in width along and adjacent to the entire distance of each side boundary of each Lot.

ARTICLE XII WATERFRONT AREAS AND WATERWAYS

Section 12.01: Restrictions for Waterways.

Unless the prior written approval of the CSC is obtained, which approval may be withheld by the CSC in its sole reasonable good faith discretion:

- (1) no wharf, pier, bulkhead, or other structure or obstruction shall be built or maintained into or upon any Waterway. No structure or obstruction shall be permitted if it offers any threat whatsoever to safe navigation upon such Waterway or to the safe and convenient use of such Waterway as a recreation facility.
- (2) no boat canal shall be constructed or installed upon any Lot nor shall any facility or device be constructed or installed upon any Lot which shall in any way alter the course or boundaries of any Waterway, or which shall involve or result in the removal of water from any Waterway.
- (3) no boats, hoists, launching facilities or any similar type of structures or equipment shall be installed, constructed or maintained upon any Lot, nor shall any boat trailer be stored on any Lot in such manner as to violate the regulations of the CSC.

Section 12.02: Use of Boats.

No boat of any kind shall be operated upon any Waterway without the prior written approval of the CSC. If such approval is granted, such operation shall conform to all rules and regulations promulgated by (i) WCOA, and/or the CSC and (ii) applicable governmental authorities concerning the use of the boats.

ARTICLE XIII DURATION AND AMENDMENT

Section 13.01: Duration, Amendment or Termination of Covenants.

These Covenants shall run with the Property and shall be binding upon the Property and all Owners and Occupants, and, except as herein specifically set forth to the contrary, shall inure to the benefit of and shall be enforceable by TWC, WCOA, the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns, until the 31st day of December in the year 2053, after which time these Covenants shall be automatically extended for successive periods of ten (10) years each unless terminated effective the 31st day of December 2053 (or

effective at the end of any such ten (10) year period) by the Owners of Assessable Lots that constitute not less than sixty-six and two thirds per cent (66-2/3%) of the total Assessed Valuation of all of the Assessable Lots based on the Assessed Valuation as of January 1 of the Year in which termination is to occur. These Covenants may be amended, but not terminated, by amendment approved by the Owners of Assessable Lots that constitute not less than sixty-six and two thirds per cent (66-2/3%) of the total Assessed Valuation of all of the Assessable Lots based on the Assessed Valuation as of January 1 of the Year in which such amendment is made effective. Any amendment effective prior to January 1, 2053 must also be approved by TWC, and TWC, in its sole and absolute discretion, may withhold its consent. Any termination of or amendment to these Covenants shall be documented and evidenced by either:

- (a) An instrument signed (i) by the Owners required by this <u>Section 13.01</u>, (ii) by TWC (if required by this <u>Section 13.01</u>), and (iii) by WCOA certifying that the instrument complies with the requirements of this <u>Section 13.01</u> and is a valid termination or amendment; or
- (b) Vote of the Owners of Assessable Lots as required by this <u>Section 13.01</u> at a meeting or other election. Notice of such meeting or election shall be given to the Owners of Assessable Lots at least thirty (30) days prior to the date thereof, stating the date, time and place of such meeting or election and the full text of the proposed termination or amendment. WCOA shall execute a document stating the full text of the termination or amendment and certifying (i) that the meeting or election was duly called and held in compliance with this <u>Section 13.01</u> and (ii) the termination or amendment was approved as required by this <u>Section 13.01</u> and is a valid termination or amendment.

WCOA's determination of compliance and validity shall be made by the Board. In making such determinations, the Board may rely on its roster of Members and shall not be required to examine title to any Assessable Lot. Each document evidencing a termination or amendment shall be recorded in the Records of each County.

ARTICLE XIV GENERAL

Section 14.01: Violation or Breach or Covenants.

In the event of any violation or breach of any provision of these Covenants, TWC and WCOA (but specifically excluding Owners and Occupants) shall have the right, following Notice to the Owner and the Occupant specifying the violation in the manner provided in Section 7.01, at reasonable times and subsequent to the expiration of the cure period specified in the Notice, to enter upon the land-on which such violation or breach exists, and to take the actions specified in the Notice to

remedy, abate and remove, at the expense of the Owner and Occupant thereof, any structure, thing, or condition that may be or exist thereon contrary to the provisions hereof. The Owner and the Occupant of the land on which the work is performed shall be liable for the cost of the work (including reasonable legal and administrative fees) and shall promptly reimburse TWC and/or WCOA for such cost upon demand. Any such costs not paid within thirty (30) days following the date of demand therefor shall be delinquent. Delinquent payments shall bear interest at the Default Rate until paid. The obligations under this Section 14.01 are secured by the lien granted in Article IV above, on the terms and conditions set forth therein. Nothing contained herein shall limit or otherwise affect the rights of the Owners, WCOA or TWC to pursue any other remedies available to them, at law or in equity.

Section 14.02: Failure to Enforce Covenants.

The failure of TWC, WCOA, the Owner of any Lot, or their respective legal representatives, heirs, successors and assigns, to enforce these Covenants or any portion thereof shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such other violation or breach occurring prior or subsequent thereto.

Section 14.03: Covenants Do Not Create Reversion.

No covenant herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 14.04: Relief for Violation or Breach.

Damages shall not be an adequate remedy for any breach or violation of any provision hereof. Accordingly, any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction, specific performance, or any other available relief either at law or in equity.

Section 14.05: Enforcement of Covenants.

Any Person who either (i) brings suit to enforce these Covenants and prevails therein, or (ii) otherwise incurs legal fees in enforcing these Covenants, shall be entitled to recover court costs and reasonable attorneys' fees from the Person against whom these Covenants are enforced.

Section 14.06: Promise of Grantee and others to be Bound by Covenants.

Each Owner, by accepting a deed or other instrument conveying an interest in any Lot, whether or not the same incorporates or refers to these Covenants, and each Occupant, by accepting possession of a Lot or any portion thereof by lease or

otherwise, thereby agrees for himself, his heirs, successors and assigns, to observe, perform and be bound by these Covenants and to incorporate the same by reference in any deed or other conveyance of his interest in any real Property subject hereto. Notwithstanding the foregoing, the failure to incorporate these Covenants in any deed or conveyance of an interest in a Lot, including, without limitation, a lease of a Lot or any portion thereof, shall not alter the fact that these Covenants shall run with the land and be fully binding upon any and all subsequent owners and holders of any interest in the Property to the same extent as if these Covenants were set out verbatim in their deed, lease or other instrument conveying any interest in the Property.

ARTICLE XV WAIVER OF LIABILITY

Section 15.01: Waiver of Liability.

THE RELEASED PARTIES SHALL NOT BE LIABLE IN DAMAGES TO ANY PERSON IN CONNECTION WITH THESE COVENANTS FOR ANY REASON WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY PERSON SUBMITTING PLANS OR SPECIFICATIONS TO ANY OF THE RELEASED PARTIES, OR TO ANY OWNER OR OCCUPANT OF THE PROPERTY, BECAUSE OF A MISTAKE IN JUDGMENT, NEGLIGENCE, NONFEASANCE, OR OMISSION ARISING OUT OF, OR IN CONNECTION WITH (I) THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE ANY SUCH PLANS OR SPECIFICATIONS, OR (II) THE INSPECTION, FAILURE TO INSPECT, ISSUANCE OF A CERTIFICATE IN ACCORDANCE WITH ARTICLE VIII OR THE FAILURE TO ISSUE SUCH CERTIFICATE. EACH OWNER AND OCCUPANT AGREES TO THE FOREGOING RELEASE OF THE RELEASED PARTIES BY (I) ACCEPTANCE OF A DEED CONVEYING ANY INTEREST IN A LOT AND/OR (II) BY ACCEPTANCE OF POSSESSION OF ALL OR ANY PORTION OF A LOT. EVERY PERSON WHO SUBMITS PLANS TO THE CSC FOR APPROVAL AND EVERY OWNER AND OCCUPANT OF ALL OR A PART OF ANY LOT AGREES: (I) NOT TO MAKE ANY CLAIM OR BRING ANY ACTION OR SUIT AGAINST ANY OF THE RELEASED PARTIES AND (II) TO PAY ALL THE COSTS AND EXPENSES INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES INCURRED BY THE RELEASED PARTIES IN CONNECTION WITH ANY SUCH CLAIM, ACTION OR SUIT BROUGHT IN VIOLATION OF THIS ARTICLE XV.

ARTICLE XVI MISCELLANEOUS

Section 16.01: Alteration of these Covenants.

No change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of these Covenants.

Section 16.02: Severability of Provisions of these Covenants.

The determination by any court of law or of equity that any provision of these Covenants is unenforceable or void shall not affect the validity and enforceability of any of the other provisions hereof.

Section 16.03: Assignment by WCOA.

WCOA shall be empowered to assign its rights, or any part thereof, to any Successor Entity, and upon such assignment, the Successor Entity shall have those rights and be subject to those duties of WCOA assigned thereby. The Successor Entity shall be bound by these Covenants to the same extent as WCOA. Any such assignment shall be accepted by the Successor Entity under a written agreement pursuant to which the Successor Entity expressly assumes the duties and obligations of WCOA thereby assigned. If for any reason WCOA shall cease to exist without having first assigned its rights and obligations hereunder to a Successor Entity, the covenants, restrictions, easements, charges and liens imposed by these Covenants shall nevertheless continue; and any Owner may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a nonprofit membership corporation and assigning the rights of WCOA hereunder to said corporation with the same force and effect, and subject to the same conditions, as provided in this Section 16.03 with respect to an assignment by WCOA to a Successor Entity.

Section 16.04: Definition of "Titles".

All titles or headings of the articles and sections herein are for the purpose of reference only and shall not be deemed to limit, modify, or otherwise affect any of the provisions hereof. All references to singular terms shall include the plural where applicable, and all references to the masculine shall include the feminine and the neuter.

Section 16.05: Notices.

Any notice given or required to be sent under the provisions of these Covenants (a "Notice") shall be deemed to have been properly given when given in writing and (i)

delivered personally, (ii) delivered to a reputable overnight delivery service providing a receipt or (iii) deposited in the United States mail, postage prepaid and registered or certified, return receipt requested to the last known address of the Person to whom notice is to be given. The address for each Owner shall be at the Lot or Lots owned by such Owner unless the Owner furnishes written notice of another address to the party giving a Notice. The effective date of any Notice (the "Effective Date") shall be the date of personal service, one (1) business day after delivery to such overnight service, or three (3) business days after being deposited in the United States mail, whichever is applicable.

Section 16.06: Assignment of TWC's Rights and Duties.

Any and all of the rights, powers, duties and reservations of TWC under these Covenants may be assigned by TWC to any Person which assumes all of the particular rights powers, duties and reservations assigned. The easements and rights-of-way reserved by TWC in Article XI, may be assigned, transferred or terminated by TWC without notice. If TWC assigns its other rights, powers, duties and reservations under these Covenants, TWC shall (i) furnish Notice to WCOA, and (ii) notify all of the then Owners in any reasonable manner selected by TWC, including publication of such notice in a newspaper or newspapers circulated in each applicable County. Upon the occurrence of such assignment and the giving of such notice, TWC (its employees, shareholders. directors or officers) shall be released and relieved from any and all liability and obligations imposed upon it or them by these Covenants. Should TWC cease to exist without having assigned to any Person all of the rights, powers, duties and reservations of TWC contained in these Covenants, then all of such rights, powers, duties and reservations of TWC shall automatically vest in WCOA.

Section 16.07: Enlargement of the Property.

At any time and from time to time, TWC shall have the right, without the joinder or consent of WCOA, the Owners or the Occupants, to add to the land then comprising the Property all or any part of the "Additional Property". As used herein, "Additional Property" shall mean and refer to all lands now owned or hereafter acquired by TWC that is within a 10-mile radius of the northwest corner of the Walker County School Land Survey, A-599, in Montgomery County, Texas.

TWC may add all or any portion of the Additional Property as it may elect in its sole discretion. The addition of the Additional Property or portions thereof to the Property shall be accomplished by the filing in the Records of the applicable County an instrument describing the portion of the Additional Property to be annexed and annexing such portion of Additional Property so described to the Property, thereby imposing these Covenants as amended from time to time, upon that portion of the Additional Property. Upon the filing of such an instrument, that portion of the

Additional Property shall become a part of the Property and the collected assessments applicable to all Lots, including similar assessments then applicable to that portion of the Additional Property, may be commingled by the Board and expended for the benefit of the Property, as enlarged, as determined by the Board. TWC may add portions of the Additional Property to the Property as many times as TWC, in its sole and absolute discretion, determines such additions may be in the best interests of the overall development of The Woodlands. Each Owner, by virtue of acceptance of any instrument conveying an interest in a Lot subject to these Covenants, acknowledges and agrees that the addition of Additional Property to the Property may result in an increase in the Annual Assessments, a dilution of their ownership percentage of the Property and a concomitant reduction in their voting rights hereunder, and each Owner, by its acceptance of the instrument conveying an interest in a Lot, agrees to the provisions of this Section 16.07 permitting the adding of Additional Property to the Property. TWC shall have no obligation to impose these Covenants on any other land owned by TWC (including the Additional Property) and nothing contained in these Covenants shall be deemed to create or give rise to any legal or equitable right, servitude, easement or other interest in or to any other lands now owned or hereafter acquired by TWC, unless and until such lands are expressly made subject to these Covenants by virtue of the recordation of an instrument imposing these Covenants upon such land in accordance with this Section 16.07.

Section 16.08: Mutuality, Reciprocity, Runs with Land.

All covenants, restrictions, easements, charges and liens contained in these Covenants: (i) are made for the direct, mutual and reciprocal benefit of the Property and each Lot therein; (ii) shall create mutual, equitable servitudes and reciprocal easements upon each Lot, in favor of every other Lot (except as otherwise herein provided); (iii) shall create reciprocal rights and obligations between the respective Owner of all Lots and privity of contract and estate between all Owners of the Lots and their respective heirs, successors and assigns; and (iv) shall, as to the Owner of each Lot and their respective heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Lots, and the present and future Owners thereof. The foregoing shall in no way create a mutual, equitable servitude or reciprocal easement with respect to the Use Restrictions.

Section 16.09: No Warranty of Enforceability.

While TWC has no reason to believe that any of the sections, terms, or provisions in these Covenants are or may be invalid or unenforceable for any reason or to any extent, TWC makes no warranty or representation as to the present or future validity or enforceability of any such sections, terms, or provisions. Any Owner acquiring a portion of the Property shall not be entitled to do so in reliance on the enforceability or validity of any one or more of such sections, terms, or provisions of these

Covenants and shall assume and does assume all risks of the validity and enforceability thereof and, by acquiring a portion of the Property, agrees to hold TWC harmless therefrom

Section 16.10: Time is of the Essence.

In regard to the acts, duties, obligations, or responsibilities to be performed by any Member, Occupant, or Owner pursuant to these Covenants, time is of the essence as to such performance.

Section 16.11: Further Restrictions.

These Covenants are in addition to and cumulative of other covenants and restrictions placed on the Property by TWC, including, without limitation, the Use Restrictions.

Section 16.12: Maximum Interest Payable.

In all events where interest is due and payable on any obligation pursuant to the provisions of these Covenants, the person to whom such payment is due shall never be entitled to receive, collect or apply as interest on such indebtedness any amount in excess of the Highest Lawful Rate. In the event the payee of such indebtedness ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be credited against the principal of the indebtedness and, if the indebtedness has been paid in full, any remaining excess shall forthwith be refunded to the payor thereof and, in such event, the payee shall not be subject to any penalties provided by law for contracting for, charging or receiving interest in excess of the Highest Lawful Rate.

Section 16.13: Governing Law.

These Covenants are made in Montgomery County, Texas, and shall be governed by and enforced in accordance with the laws of the State of Texas. Any and all obligations performable hereunder, including but not limited to, the obligation to pay Annual Assessments and Benefits Assessments, are to be performed in Montgomery County, Texas.

IN WITNESS WHEREOF, The Woodlands Corporation has executed these Covenants effective as of October 26, 1993.

THE WOODLANDS CORPORATION

	By: Name: Michael H. Richmond Title: Executive Vice President
STATE OF TEXAS	§ 8
COUNTY OF MONTGOMERY	§ 8
	acknowledged before me on October 26, 1993, by Michael e President of The Woodlands Corporation, a Delaware poration.

Notary Public, State of Texas

TRACT I WOODLANDS TOWN CENTER 1.000 ACRES

Being a 1.000 acre tract of land situated in Montgomery County, Texas, in the Walker County School Land Survey, A-599, and being more particularly described by metes and bounds as follows with all control referred to the Texas State Plane Coordinate System, Lambert Projection, South Central Zone:

BEGINNING at the southeast corner of the herein described tract located in the north right-of-way line of Woodlands Parkway as recorded in Volume 823, Page 224 of the Montgomery County Deed Records, same being S 79°40'32" W, 84.12 feet from the intersection of the north right-of-way line of said Woodlands Parkway with the west right-of-way line of existing Interstate Highway No. 45. Said POINT OF BEGINNING having a Texas State Plane Coordinate Value of X=3,121,756.01, Y=862,067.63 and being S 46°41'11" E, 7,311.57 feet from the northwest corner of said Walker County School Land Survey, A-599;

THENCE along the north right-of-way line of said Woodlands Parkway, S 79° 40' 32" W, 208.71 feet to a point for corner;

THENCE leaving said right-of-way line N 10°19'28" W, 208.71 feet to a point for corner;

THENCE N 79°40'32" E, 208.71 feet to a point for corner;

THENCE S 10°19'28" E, 208.71 feet to the POINT OF BEGINNING and containing 1.000 acres of land.

TRACT II WOODLANDS RESEARCH FOREST 1.916 ACRES

Being a 1.916 acre tract of land situated in Montgomery County, Texas, in the John Taylor Survey, A-547, and being more particularly described by metes and bounds as follows with all control referred to the Texas State Plane Coordinate System, Lambert Projection, South Central Zone:

BEGINNING at the northeast corner of the herein described tract located in the southwest line of that certain 60 foot wide Arco Pipeline easement as recorded in File No. 8042140 of the Montgomery County Real Property Records, same being a 60 foot wide Texas Pipeline Company easement as recorded in File No. 8034880 of the Montgomery County Real Property Records. Said POINT OF BEGINNING having a Texas State Plane Coordinate Value of X=3,114,940.85, Y=

Exhibit "A" - Page 1 of 2

868,693.52 and being N 42°52'44" W, 2,197.35 feet from the northwest corner of the Walker County School Land Survey, A-599, located in the east line of said John Taylor Survey, A-547;

THENCE along the southwest line of said pipeline easement, S 39°43'35" E, 139.37 feet to a point for corner;

THENCE leaving said easement, S 03°32'58" E, 103.16 feet to a point for corner;

THENCE S 72°24'11" W, 351.59 feet to a point for Corner;

THENCE N 03°32'58" W, 301.00 feet to a point for corner;

THENCE N $86^{\circ}27'02"$ E, 258.81 feet to the POINT OF BEGINNING and Containing 1.916 acres of land.

TRACT III WOODLANDS TOWN CENTER 0.935 ACRES

Being a 0.935 acre tract of land situated in Montgomery County, Texas in the Walker County School Land Survey, A-599, and being more particularly described by metes and bounds as follows with all control referred to the Texas State Plane Coordinate System, Lambert Projection, South Central Zone:

BEGINNING at the southeast corner of the herein described tract located in the proposed west right-of-way line of Interstate Highway No. 45 having a Texas State Plane Coordinate Value of X= 3,121,540.61, Y=863,806.99 and being S 57°18'22" E, 6,065.55 feet from the northwest corner of said Walker County School Land Survey, A-599;

THENCE leaving said proposed right-of-way line West, 230.00 feet to a point for corner;

THENCE North, 186.88 feet to a point for corner;

THENCE East, 206.37 feet to a point for corner in said right-of-way line;

THENCE with said right-of-way line along a curve to the left an arc distance of 188.37 feet based on a radius of 17,377.85 feet, a central angle of 00(37' 16? and having a chord which bears S 07°12'19" E a chord distance of 188.37 feet to the POINT OF BEGINNING and containing 0.935 acres of land.

GDB\cov.des

Exhibit "A" - Page 2 of 2