

**FIRST AMENDED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SADDLE OAKS ADDITION**

**THIS FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SADDLE OAKS ADDITION** is made on the date hereinafter set forth by the membership of the Saddle Oaks Homeowners Association, a Texas non-profit corporation (hereinafter referred to as the "Association").

**WITNESSETH:**

WHEREAS, FM/Saddle Oaks, Ltd., a Texas limited partnership (the "Declarant") recorded the Declaration of Covenants, Conditions and Restrictions for Saddle Oaks Addition dated September 3, 1999 and recorded in Volume 4451, Page 00693 of the Deed Records of Denton County, Texas (the "Original Declaration"); and

WHEREAS, the Original Declaration provides for amendment of that instrument by an instrument signed by 75% of the Owners in the Association and by a representative of the Town of Flower Mound; and;

WHEREAS, the following amendments to the Original Declaration have been approved by the requisite number of Owners in the Association and by the Town of Flower Mound as evidenced by their (or their duly authorized agent's) signature herein below.

NOW THEREFORE, the Original Declaration is hereby amended and replaced by this Declaration and the Property described in Exhibit "A" attached hereto and made a part hereof (the "Property") shall be held, sold and conveyed subject to the restrictions, covenants and conditions, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a planned community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any party thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE 1.  
DEFINITIONS**

1.1 "**Association**" shall mean and refer to the Saddle Oaks Homeowners' Association, Inc., a Texas non-profit corporation established for the purpose set forth herein, its successor and assigns.

1.2 "**Board**" shall mean and refer to the Board of Directors of the Association.

1.3 "**Common Areas**" shall mean and refer to that portion of the Property, if any, conveyed to the Association for the use and benefit of the Owners.

1.4 "**Common Maintenance Areas**" shall mean and refer to the Common Areas, if any, and the entrance monuments, drainage facilities, detention ponds, right-of-ways, landscaping, and such other areas lying within dedicated public easements or right-of-ways as deemed appropriate by the Board for the preservation, protection and enhancement of the property values and the general health, safety and welfare of the Owners.

1.5 "**Declarant**" shall mean and refer to FM/Saddle Oaks, Ltd., its successors and assigns.

1.6 "**Declaration**" shall mean and refer to this First Amended Declaration of Covenants, Conditions and Restrictions for the Saddle Oaks Addition, and any amendments, annexations and supplements thereto made in accordance with its terms.

1.7 "**Home**", "**Dwelling**" or "**Residence**" shall mean and refer to any residential unit, situated upon any Lot, including the parking garage utilized in connection therewith and the Lot upon which the Home, Dwelling or Residence is located.

1.8 "**Lienholder**" or "**Mortgagee**" shall mean the holder of a first mortgage lien, either on any Home and/or any Lot.

1.9 "**Lot**" shall mean and refer to any plot or land indicated upon any recorded subdivision map of the Property or any part thereof creating single family home sites, with the exception of the Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon.

1.10 "**Member**" shall mean and refer to every person or entity who holds membership in the Association. Each Owner of a Lot shall be a Member in the Association.

1.11 "**Owner**" shall mean and refer to the record owner, , whether one (1) or more persons or entities, of the fee simple title to any Lot, including the home builder, but shall exclude those having an interest, merely as security for the performance of an obligation. However, the term "Owner" shall include any lienholder or mortgagee who acquires fee simple title to any Lot which is part of the Property, through deed in lieu of foreclosure or through judicial or nonjudicial foreclosure.

1.12 "**Property**", "**Premises**" or "**Development**" shall mean and refer to the real property described in Exhibit "A," known as the Saddle Oaks Addition and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

1.13 "**Town**" shall mean and refer to the Town of Flower Mound, Denton County, Texas.

**ARTICLE 2.  
BY-LAWS  
OF  
SADDLE OAKS HOMEOWNERS'  
ASSOCIATION, INC.**

2.1 **Establishment of Association**. The formal establishment of the Saddle Oaks Homeowners' Association will be accomplished by the filing of the Articles of Incorporation of the Saddle Oaks Homeowners' Association with the Secretary of State for the State of Texas and the subsequent issuance by the Secretary of State of the Certificate of Incorporation of the Saddle Oaks Homeowners' Association.

2.2 **Adoption of By Laws**. By-Laws for the Saddle Oaks Homeowners' Association will be established and adopted by the Board.

2.3 **Membership**. Each Owner of a Lot, including any successive buyer(s), shall automatically and mandatorily become a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Every member shall have the right, upon written request to the Association stating a proper purpose for the request, at all reasonable times during business hours to inspect and copy the books and records of the Association reasonably related to his or her interest in the Lot at the requesting member's expense.

2.4 **Voting Rights**. Each Owner shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as

they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot.

(a) **Suspension.** All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in payment of any assessment duly established pursuant to this Article or is otherwise in default hereunder or under the By Laws or rules and regulations of the Association and such suspension shall apply to the proxy authority of the voting representative, if any.

(b) **No Cumulative Voting.** At all Association meetings there shall be no cumulative voting. Prior to all meetings, the Board shall determine the total number of votes outstanding and the Members entitled to vote.

**2.5 Notice of Quorum.** Written notice of any meeting called for the purpose of taking any action authorized herein shall be sent to all Members, or delivered to their Residences, not less than thirty (30) days nor more than (60) days in advance of meeting. At any such meeting called, the presence of Members or of proxies of voting representatives entitled to cast two-thirds (2/3) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be two-thirds (2/3) of the quorum requirements for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum (the quorum requirement being reduced for each such meeting). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**2.6 Funding.** Subject to the terms of this Article, each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (1) annual assessment or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Such assessments will remain effective for the full term (and extended term, if applicable) of this Declaration. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. The personal obligation for delinquent assessments

shall not pass to the successors in title of such Owner unless expressly assumed by them.

## **2.7 Assessments.**

(a) **Maintenance Fund** Subject to the terms of this Article, each Lot is hereby subject to an initial maximum maintenance charge of \$\_\_\_\_\_ per month or \$\_\_\_\_\_ per annum (until such maintenance charge shall be increased in the By Laws of the Association), for the purpose of creating a fund to be designated and known as the "maintenance fund," which maintenance charge and assessment will be paid by the Owner or Owners of each Lot in advance in monthly, quarterly, or annual installments.. The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly, or annually, will be determined by the Board at least thirty (30) days in advance of each affected assessment period. Said rate may be adjusted from time to time by the Board as the needs of the Association may, in the judgment of the Board, require. The assessment for each Lot shall be uniform. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

(b) **Purpose of Maintenance Fund.** The Association shall establish a maintenance fund composed of Owners' annual maintenance assessments and shall use the proceeds of such fund in providing for normal, recurring maintenance charges for the Common Maintenance Areas for the use and benefit of all Members of the Association. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for existing landscaping) and the improvements to such Common Maintenance Areas, such as sprinkler systems, and private streets, if any, provided the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the property to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the employment of security guards or watchmen, if any, caring for vacant lots; and any other necessary or desirable act, in the opinion of the Board, to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the Board in the expenditure of said funds and the determination of what

constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund to ensure the continuous and perpetual use, operation, maintenance, and/or supervision of all facilities, structures, improvements, systems, areas or grounds that are the Association's responsibility. The reserve fund shall be established and maintained out of regular annual assessments.

**(c) Special Assessment for Working Capital Fund, Nonrecurring Maintenance and Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy special assessments as follows:

In any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any nonrecurring maintenance, or the acquisition, construction, reconstruction, repair, or replacement of a capital improvement upon any Common Maintenance Area, including fixtures and personal property related thereto, may be assessed. The Association shall not commingle the proceeds of such special assessment with the maintenance fund. Such proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question.

**2.8 Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within ten (10) days after the due date shall bear interest from due date at the highest non-usurious rate of interest allowed by Texas law or 18% per annum, whichever is less. The Association shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien retained herein against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of his property.

**2.9 Subordinated Lien to Secure Payment.** To secure the payment of the maintenance charge and assessment established hereby and to be levied on individual Lots as above provided, the Declarant in the Original Declaration reserved a lien for the benefit of the Association, said lien to be continued by this Declaration and shall be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate, and inferior to all liens, present and future, given, granted, and created by or at the insistence and request of the Owner of any such Lot to secure the payment of monies

advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding, valid, and subsisting first mortgage lien, said beneficiary shall give the holder of such first mortgage sixty (60) days written notice of such proposed action, such notice shall be sent to the nearest office of the lienholder by prepaid U.S. registered mail, containing the statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such First mortgage lienholder, the beneficiary shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular property covered by such first mortgage lien to the holder thereof. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments, which became due prior to such sale or transfer. No sale, foreclosure, or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the right to file notices of liens in favor of the Association in the official records of Denton County, Texas.

**ARTICLE 3.  
GENERAL POWERS AND DUTIES  
OF THE  
BOARD OF DIRECTORS OF THE ASSOCIATION**

**3.1 Purpose of Maintenance Fund.** The Board, for the benefit of the Owners, shall provide and shall pay out of the maintenance fund provided in Article 2 above, the following:

(a) Taxes and assessments, and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.

(b) Operation, maintenance and supervision of the Common Maintenance Area.

(c) Maintenance of the equestrian/pedestrian trails identified on the final plat of the Property, which maintenance shall be the responsibility of the Association.

(d) The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board (provided that any contract for management of the Association shall be terminable by the Association, with no penalty, upon ninety (90)

days prior written notice to the managing party) and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(e) Legal and accounting services.

(f) A policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board, including a policy or policies of insurance as provided herein in Article 4.

(g) Workers compensation insurance to the extent necessary to comply with any applicable laws.

(h) Such fidelity bonds as may be required by the By Laws or as the Board may determine to be advisable.

(i) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes, or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

**3.2 Powers and Duties of Board.** The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the By Laws of the Association:

(a) To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

(b) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

(c) To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

(d) To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

(e) To make reasonable rules and regulations (i) for the operation of the



Common Maintenance Areas (ii) for the use, occupancy, leasing or sale, maintenance, repair, modification and appearance of Lots; and (iii) regulating any activity which may affect the Owners' use and enjoyment of their Lots or the property values in the Development, and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by Owners constituting a majority of the votes of the Association, or with respect to a rule applicable to less than all of the Common Areas, by a majority of the votes of the Owners in the portions affected. However, the Association's agreements, covenants and restrictions pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, areas or grounds that are the Association's responsibility, may not be amended without the prior written consent of the Town.

(f) To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

(g) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the

(h) To enforce the provisions of any rules, covenants, conditions and restrictions made hereunder and to enjoin and seek damages from any Owner for violation of such covenants, conditions, restrictions or rules.

(i) To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

**3.3 Board Powers Exclusive.** The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the Maintenance Fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

**3.4 Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

**ARTICLE 4.**  
**TITLE TO COMMON AREAS**

**4.1 Association to Hold.** The Association shall assume all maintenance obligations with respect to any Common Areas, which may be hereafter established.

**4.2 Liability Insurance.** From and after the date on which title to any Common Area vests in the Association, the Association shall purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its Members, covering occurrences on the Common Areas. The policy limits shall be as determined by the Board. The Association shall use its best efforts to see that such policy shall contain, if available, cross liability endorsements or other appropriate provisions for the benefit of the Members, Board, and the management company and other insured's, as their interests may be determined.

**4.3 Condemnation.** In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps that it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. In the event that the Board determines that the funds cannot be used in such a manner due to lack of available land for additional Common Areas or for whatever reason, any remaining funds may be utilized by the Association for the general maintenance fund.

**4.4 Amendment.** The Association's agreements, covenants or restrictions pertaining to the use, operation, maintenance, and/or supervision of any facilities, structures, improvements, systems, areas or grounds that are the Association's responsibility may not be amended without the prior written consent of the Town.

**ARTICLE 5.**  
**EASEMENTS**

**5.1 Utility Easements.** The Association hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of the Association or its designees, upon, across, over, through and under any portion of the Common Area or any portion of any Lot outside of the permitted building area of such Lot, for ingress, egress, installation, replacement, repair,

maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television. The Association, for itself and its designee, reserves the right to retain title to any such easements.

**5.2 Association's Easement of Correct Drainage.** The Association hereby reserves a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and implement other erosion controls in order to maintain reasonable standards of health, safety, and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damage, as may be necessary to provide adequate drainage for any portion of the Property. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon the Association to correct or maintain any drainage facilities within the Property.

**5.3 Easement for Unintentional Encroachment.** The Association hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching property to the extent of such encroachment.

**5.4 Entry Easement.** In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency repairs and to do the work reasonably necessary for the proper maintenance and operation of the Property, entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

**5.5 Drainage Easements.** Easements for the installation and maintenance of utilities, storm water retention/detention ponds, and/or conservation area are reserved as may be shown on the recorded plat. Within the easement areas, no structure, plant or material shall be placed or be permitted to remain if it may hinder or change the direction or flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

## **ARTICLE 6 ARCHITECTURAL REVIEW**

**6.1 General.** No structure shall be placed, erected or installed upon any Lot and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements) (collectively, the "Work") shall take place except in compliance with this Article 6 and the Design Guidelines. Notwithstanding the above, an Owner may repaint the exterior of a structure in accordance with originally approved color scheme and rebuild in accordance with originally approved plans and specifications without first seeking approval. No approval shall be required to remodel, repaint or redecorate the interior of structures on his or her Lot. However, modifications to the interior of screened porches, patios and similar portions of a Lot visible from outside the Lot shall be subject to approval.

This Article X shall not apply to improvements to the Common Areas by or on behalf of the Association.

**6.2 Architectural Review.** Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article 6 shall be handled by the Architectural and Environmental Review Committee (the "Committee"). The Committee shall consist of three persons appointed by the Board. Committee members shall serve and may be removed at the discretion of the Board.

### **6.3 Guidelines and Procedures.**

(a) Design Guidelines. The Board may prepare and amend from time-to-time design and development guidelines and application and review procedures (the "Design Guidelines"), which shall be applicable to all construction activities within the Property. Any amendments to the Design Guidelines shall be prospective only and shall not apply or require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the Board is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions, which vary from one portion of the Property to another depending upon location and unique characteristics.

The Association shall make the Design Guidelines available to Owners and builders who seek to engage in development or construction within the Property, and all such Persons shall conduct their activities in accordance with such Design Guidelines.

(b) Procedures. No Work shall commence on any Lot until an application for approval has been submitted to and approved by the Committee. Such application shall be in the form required by the Committee and shall include plans and specifications ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, and other features of proposed construction, as applicable. The Committee may require the submission of such additional information, as it deems necessary to consider any application. The Plans shall be in such form and shall contain such information as may reasonably be required pursuant to the Design Guidelines.

In reviewing each submission, the Committee may consider (but shall not be limited to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finished grade elevations, the quality of workmanship and design, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, architectural merit and compliance with the general intent of the Design Guidelines and the general scheme of development for the Property.

The Committee shall, within forty-five (45) days after receipt of Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission of (i) the approval of Plans or (ii) the disapproval of Plans, specifying the segments or features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the Committee written notice of such failure to respond, stating that, unless the Committee responds within ten (10) days of receipt of such notice, approval shall be deemed granted. However, no Plans, whether expressly approved or deemed approved pursuant to the foregoing, shall be inconsistent with this Declaration or the Design Guidelines, if any, unless a variance has been granted in writing pursuant to Section 6.5.

Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed and postage prepaid, is deposited with the United States Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall also be sufficient and shall be deemed to have been given at the time of delivery.

All work shall be completed within one (1) year of commencement of construction or such shorter period as the Committee may specify in the notice of approval, unless completion within such time is delayed due to

causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Committee.

**6.4 No Waiver of Future Approvals.** The Committee's approval of any Plans for any Work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar Plans or other matters subsequently or additionally submitted for approval.

**6.5 Variances.** The Committee may authorize variances from compliance with the Design Guidelines and any required procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations so require. Such variances shall not, however, (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in this Declaration; or (iii) stop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not constitute hardships.

**6.6 Limitation of Liability.** Review and approval of any application pursuant to this Article 6 is made on the basis of aesthetic considerations only, and the Committee shall not bear any responsibility for ensuring (i) structural integrity or soundness of approved construction or modifications, (ii) compliance with building codes and other governmental requirements, or (iii) conformity of quality, value, size or design among Lots. Neither the Association, the Board, the Committee nor member of any of the foregoing, shall be held liable for soil conditions, drainage or other general site work, or for any defects in Plans revised or approved hereunder, or for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Lot. Neither the Association, the Board, the Committee nor member of any of the foregoing, shall be liable in damages to anyone submitting Plans for approval, or to any Owner of property affected by the approval or disapproval of Plans, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of any such Plans or the failure to approve or disapprove any such Plans.

**6.7 Enforcement.** Any Work performed in violation of this Article 6 or the Design Guidelines shall be deemed nonconforming. Upon written request from the Board, an Owner shall, at his or her own cost and expense, cure such nonconforming Work or remove such structure or improvement and restore the Lot to substantially the same condition as existed before the nonconforming Work. Should an Owner fail to remove or restore as required

hereunder, the Association or its designee, shall have the right to enter the Lot and remove or cure the violation. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the nonconforming Lot and collected as an assessment pursuant to Article 2.

In the event that any Person fails to commence and diligently pursue to completion all approved Work, the Association shall be authorized, after providing notice and an opportunity to cure to the Owner, to enter upon the Lot and remove or complete any incomplete Work and to assess all costs incurred against the Lot and the Owner thereof as an assessment pursuant to Article 2.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article 6 and the decisions of the Committee.

## **ARTICLE 7. PROTECTIVE COVENANTS**

**7.1 Use and Occupancy.** All Lots and Dwellings shall be used and occupied for single-family residence purposes. No Lot or Dwelling may be used for commercial, institutional or other non-residential purpose if such use involves the attendance or entry of non residents upon the Lot or otherwise diminishes the residential character of the Lot or neighborhood. This prohibition shall not apply to "garage sales" conducted with prior written consent of the Association provided that no Owner shall conduct more than two (2) garage sales of no more than two (2) days duration each during any twelve (12) month period.

**7.2 Minimum Dwelling Size.** The gross square footage of any single-family residence constructed on a Lot shall not be less than two thousand eight hundred (2,800) square feet, exclusive of porches and garages.

**7.3 Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done which may be or may become an annoyance or nuisance to the Property, or Lot, or Dwelling, or any part thereof.

**7.4 Temporary Structures.** No structures of a temporary character, including, without limitation, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, shall be used on any Lot at any time as a residence, either temporarily or permanently.

**7.5 Signs and Picketing.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence

or other improvement upon such Lot so as to be visible from public view except the following:

(a) For Sale Signs. An Owner may erect one (1) sign not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the Property for sale.

(b) Association's Signs. Signs may be erected by the Association.

Except as provided above and except for school pride signs, no yard signs shall be placed upon any Lot for a period of more than 90 days and no more than a total of three (3) signs may be erected at any given time. In addition to the foregoing, to protect the safety and harmony of the community, no person shall engage in picketing on any Lot, easement, right way or Common Area within or adjacent to the Property, nor shall any vehicle parked, stored or driven in or adjacent to the Property bear or display any sign, slogans, symbols, words or decorations intended to create controversy, invite ridicule or disparagement, or interfere in any way with the exercise of the property rights, occupancy or permitted business activities of any Owner.

**7.6 Campers, Trucks, Boats and Recreational Vehicles.** No campers, vans, pickup trucks, boats, boat trailers, recreational vehicles and other types of non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within the garage located on such Lot and/or said vehicles and accessories are screened from view by a screening structure or fencing and said vehicles and accessories are in an operable condition.

**7.7 Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

**7.8 Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

**7.9 Sight Distance and Intersections.** No fence, wall, hedge, shrub planting or other obstruction to view in excess of two feet (2') in height on



any corner Lot within the triangular area formed by the street right of way lines and a line connecting them at points twenty five feet (25') from the intersection of the right-of-way lines, or in the case of a rounded property corner, from the intersection of the right of way lines. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street right-of-way line with the edge of a driveway pavement edge or alley right of way line. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

**7.10 Parking in Common Maintenance Area.** No vehicles, trailers, implements or apparatus may be driven or parked in the Common Maintenance Area or on any easement unless otherwise permitted by plat or other recorded document.

**7.11 Commercial or Institutional Use.** No Lot, and no building erected or maintained on any Lot, shall be used for manufacturing, industrial, business, commercial, institutional or other non residential purposes.

**7.12 Building Standards.** No building shall be erected or maintained on any Lot unless it complies with all applicable standards, including any governmental ordinances.

**7.13 Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without prior consent of the Association. Any such approved building must be in conformity with the external design, color, type, materials and appearance of the Dwelling as determined by the Committee in its sole discretion.

**7.14 Fences.**

(a) No fence, wall or hedge shall be erected or maintained on any Lot nearer to the street than the building setback lines for the front and side yards.

(b) All Lots adjacent to an equestrian/pedestrian trail shall utilize tubular steel fencing adjacent to the trail in accordance with Exhibit "B" attached hereto and made a part hereof.

(c) Except as provided above, all fencing shall be wrought iron or 3-rail vinyl fencing, which is in conformity with the Development.

**7.15 Antennae, Satellite Dishes and Solar Collectors.** No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus, or solar collector panels or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view at a point in the center of the public right-of-way directly in front of the house erected on such Lot.

**7.16 Chimneys.** All fireplace flues, smoke stacks, and spark arresters shall be completely enclosed and concealed from public view in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the Dwelling.

**7.17 Clothes Hanging Devices.** Exterior clothes hanging devices shall not be permitted.

**7.18 Window Treatment.** No aluminum foil, reflective film or similar treatment shall be placed on window or glass doors.

**7.19 Decking.** No second story wood deck, which is greater than 120 square feet in area, shall be permitted unless constructed under a full roof.

**7.20 Car Ports.** No carports, other than porte-cochere type construction approved by the Committee, may be constructed on a Lot.

**7.21 Swimming Pools.** No permanent above-ground swimming pool shall be permitted to be installed on a Lot.

**7.22 Landscaping.** All Dwellings constructed from and after the date of the recording of this Declaration shall be sodded in the front, side and rear 25 feet of the Lot. The Owner shall also install a complete landscaping package for the front portion of the Lot.

**7.23 Roof Pitch.** All Dwellings constructed from and after the date of the recording of this Declaration shall have a front to back roof pitch of no less than 8 to 12.

**7.24 Exterior Materials.** The exterior of all Dwellings shall be constructed of at least 80% brick, stone or stucco, or any combination thereof.

**7.25 City Code.** In the absence of a specific restriction contained herein regarding the construction of improvements on a Lot, the Committee shall use the code requirements, if any, of the local municipality as a guide for reviewing any application for the construction of such improvement.

## **ARTICLE 8. PROPERTY RIGHTS**

**8.1 Owners' Easement of Enjoyment.** Every Owner shall have a right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to establish and publish rules and regulations governing the use of the Common Areas affecting the welfare of Association Members;

(b) The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for such purposes and subject to the conditions as may be agreed by the Association. No such dedication or transfer shall be effective unless an instrument in writing signed by Owners entitled to cast two-thirds (2/3) of the votes of each class of membership and by a duly authorized representative of the Town has been recorded agreeing to such dedication or transfer;

(d) All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the Owners, and all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

**8.2 Effect of Declaration.** Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, conditions, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, conditions, restrictions and covenants were fully related and set forth in their entirety in said documents.

**8.3 Rezoning Prohibited.** No Lot shall be rezoned to any classification allowing commercial, institutional or other non-residential use without the express, written consent of the Association which may be withheld in the Board's sole discretion. The Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the enjoined party.

## **ARTICLE 9. ANNEXATION**

**9.1 Annexation by Action of Members.** At any time the Board may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved in writing by members entitled to cast two-thirds (2/3rds) of the total votes in both classes of membership, by a duly authorized representative of the Town and. Any property that is contiguous to the Property to this Declaration may be annexed here to according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation setting forth the legal description of the property being annexed and executed by the parties herein described.

**9.2 No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of any Member to annex any property to this Declaration and no Owner of Property excluded from the Declaration shall have any right to have such property annexed thereto.

## **ARTICLE 10. GENERAL PROVISIONS**

**10.1 Remedies.** In the event of any default by any Owner under the provisions of the Declaration, By Laws or rules and regulations of the Association, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the By Laws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other process against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for the payment of the money and collection thereof, or for any combination of the remedies, or for any other relief. No remedies herein provided or available at law or in equity

shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses, and all damages, permitted by law but, with reference to any Lots financed by FHA insured loans, not in excess of the maximum rate of FHA loans at the time of delinquency, from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of respective maintenance assessment (to the same extent as the lien provided herein for unpaid assessments), upon the Lot and upon all of the additions and improvements thereto, and upon all personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

**10.2 Term and Amendments.** This Declaration shall run with and bind the land for a term of twenty five (25) years from the date this Declaration is recorded, after which time they shall be automatically renewed for successive periods of ten (10) years, unless seventy five percent (75%) of the votes outstanding shall have voted to terminate this Declaration and the prior written consent has been obtained from the Town upon the expiration of the initial twenty five (25) year period or any extension thereof, which termination shall be by written instrument signed by seventy five percent (75%) of the Owners and countersigned by a duly authorized representative of the Town and properly recorded in the Denton County, Texas land records. This Declaration may be amended by an instrument signed by Owners constituting not less than seventy five percent (75%) of the votes of the Association and countersigned by a duly authorized representative of the Town, Any amendment must be recorded. The Association may not be dissolved without the prior written consent of the Town.

**10.3 Severability.** Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

**10.4 Rights and Obligations.** The provisions of this Declaration and the Articles of Incorporation and By Laws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording of the acceptance of a deed conveying a Lot of any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this

Declaration and the Articles of Incorporation and By-Laws, whether or not mention thereof is made in said deed.

**10.5 Miscellaneous Provisions.** Any provisions of this Declaration or of the Articles of Incorporation and By Laws to the contrary notwithstanding, Upon the request of any first Mortgagee of a Dwelling on a Lot, the Association shall furnish to such Mortgagee a written notice of any default by the Owner of such Dwelling in the performance of such Owners obligations under this Declaration or the By Laws or Association rules and regulations, which is not cured within thirty 30 days. Any first Mortgagee of a Dwelling who comes into possession of such Dwelling pursuant to the remedies provided in the mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Dwelling which accrued prior to the time such holder comes into possession of the Dwelling.

**10.6 Gender Neutral.** All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

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

**10.8 Conflicts.** In the event of conflict between the terms of this Declaration and the By- Laws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

**10.9 Failure of Association to Perform Duties.** Should the Association fail to carry out its duties as specified in this Declaration, the Town or its lawful agents shall have the right and ability, after due notice to the Association, to remove any landscape systems, features or elements that cease to be maintained by the Association; to perform the responsibilities of the Association if the Association fails to do so in compliance with any of the provisions of this Declaration, the agreements, covenants or restrictions of the Association, or of any applicable Town codes or regulations; to assess the Association for all costs incurred by the Town in performing said responsibilities if the Association fails to do so; and/or to avail itself of any other enforcement actions available to the Town pursuant to state law or Town codes and regulations. Should the Town exercise its rights as specified above, the Association shall indemnify and hold the Town harmless from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the Town's

removal of any landscape systems, features or elements that cease to be maintained by the Association or from the Town's performance of the aforementioned operation, maintenance or supervision responsibilities of the Association due to the Association's failure to perform said duties.

IN WITNESS WHEREOF, the President of the Association has caused this instrument to be executed on its behalf and on behalf of those Owners who have consented to this Declaration, attested as of the day and year first above written.

ATTEST:

ASSOCIATION : Saddle Oaks Homeowners Association, a Texas non-profit corporation