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FIRST AMENDED AND RESTATED DEED RESTRICTIONS FOR AFTON OAKS

This First Amended and Restated Deed Restrictions for Afton Oaks ("Restrictions") is made effective this 28th day of February, 1996, by owners, being those persons whose signatures are attached hereto.

PREAMBLE:

A. The undersigned are the majority of Owners of certain real property in Houston, Harris County, Texas, described more particularly as Afton Oaks ("AO"), a subdivision shown on the Plat in Volume 35, Page 34: Afton Oaks section 2, a subdivision established pursuant to an instrument recorded in Volume 38, Page 33: Afton Oaks section 3, a subdivision established pursuant to an instrument recorded in Volume 39, Page 18: Afton Oaks section 4, a subdivision established pursuant to Instrument No.986088: Afton Oaks section 6, a subdivision established pursuant to an instrument recorded in Volume 42, Page 17 and certain other properties described in attached Exhibit "A" (the "Described Properties") all in the Map Records of Harris County, Texas (said Afton Oaks, Afton Oaks section No.2, No.3, No.4, No.6 and Described Properties being hereinafter collectively referred to as the "Subdivision" or "Afton Oaks").

B. The Owners intend to maintain the Subdivision as a residential area. These Restrictions are executed (a) in furtherance of a common and general plan for the Subdivision; (b) to protect and enhance the quality, value, desirability, and attractiveness of all property within the Subdivision; (c) to provide for Afton Oaks civic Club, Inc. (hereinafter "the Association") to hold, maintain, care for and manage the common Area and to perform functions for the benefit of Owners and of Lots (both hereinafter defined) within the Subdivision; (d) to define the duties, powers, and rights of the Association; (e) to define certain duties, powers, and rights of Owners of Lots within the Subdivision; and, (f) amend those certain restrictions recorded in Volume 2242, Page 98: Volume 2624, Page 287: and Volume 2696, Page 170 of the Deed Records of Harris county, Texas (hereinafter referred to as "Original Restrictions").

C. The Owners have decided to amend the original Restrictions and to reaffirm dedications shown on the Plat.

THEREFORE, OWNER HEREBY DECLARES AS FOLLOWS:

ARTICLE 1.

ESTABLISHMENT OF A GENERAL PLAN

Section 1.1 General Plan and Deed Restrictions. These Restrictions hereby are established to amend the Existing Restrictions, pursuant to and in furtherance of a common and general plan for the improvement and sale of Lots within the Subdivision and for the purpose of enhancing and protecting the quality, value, desirability, and attractiveness of the Subdivision. Owners, for themselves, their successors, and assigns, hereby declare that the Subdivision and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, exceptions, and other provisions set forth in these Restrictions, for the duration thereof. The Lots and Common Area in the Subdivision shall be subject to the jurisdiction of the Association. Nothing herein shall be construed to release the Existing Restrictions in any section of Afton Oaks that does not amend the Existing Restrictions pursuant to the method stated in the Existing Restrictions for each such section.

Section 1.2 Covenants and Restrictions. The covenants, conditions, restrictions, limitations, and exceptions of these Restrictions hereby are imposed upon each Lot, and the Common Areas within the Subdivision, for the benefit of each and every other Lot and parcel of Common Area within the Subdivision.

Section 1.3 Covenants Appurtenant. The covenants, conditions, restrictions, limitations, exceptions, and other provisions set forth in these Restrictions shall run with, and shall inure to the benefit of and shall be binding upon, all of the Subdivision, and each Lot and the Common Area therein and shall be binding upon and inure to the benefit of, (a) the Subdivision, (b) Owners and their successors and assigns, (c) the Association and its successors and assigns, and (d) all Persons having, or hereafter acquiring, any right title or interest in all or any portion of a Lot in the Subdivision and their heirs, executors, successors, and assigns.

Section 1.4 Relation Back. These Restrictions shall be effective as of filing but relate back to the original filing dates of each instrument described in the Plat and Original Restrictions.

## ARTICLE 2 .

### DEFINITIONS

The following words and phrases when used in these Restrictions shall have the meanings hereinafter specified.

Section 2.1 Architectural Committee. "Architectural Committee" shall refer to the three (3) person committee elected by the Owners and having the duties specified in Article 6.

Section 2.2 Association. "Association" shall mean Afton Oaks Civic Club, Inc., a Texas non-profit corporation existing as of the date of the recording of these Restrictions, the Members of which shall be the Owners of the Lots within the Subdivision, and which is a property owner's Association.

Section 2.3 Board. "Board", "Board of Directors" or "Directors" shall mean the Board of Directors of the Association, as described in the Bylaws.

Section 2.4 Bylaws. "Bylaws" shall mean the bylaws of the Association, as amended from time to time, as provided therein and in accordance with the applicable provisions of the laws of the State of Texas or other applicable jurisdiction(s). Should there be a conflict in the provisions of the Bylaws and these Restrictions, these Restrictions shall prevail.

Section 2.5 Common Area. "Common Area" or "Common Areas", commonly referred to as esplanades, medians or parks, shall mean those landscaped areas or landscapable areas within the Subdivision that are not a part of any Lot.

Section 2.6 Common Assessments. "Common Assessment" or "Common Assessments" shall mean the annual Association dues levied pursuant to Article 7 hereof for managing, maintaining, operating, repairing, and insuring the Common Area, and other purposes of the Association as set out in its Articles of Incorporation, Bylaws and these Restrictions.

Section 2.7 Existing Restrictions. "Existing Restrictions" shall mean any restrictions imposed on the Property by either (i) the instruments recorded in the Deed Records of Harris county, Texas, including but not limited to those in Volume 2242, Page 98; Volume 2624, Page 287; Volume 2696, Page 170 and any deed incorporating any of the foregoing as restrictive covenants, or (ii) the Plat.

Section 2.8 Household Group. "Household Group" shall mean one or more natural Persons, each related to the other by blood, marriage, or legal adoption, or a group of not more than four (4) such Persons not all so related, together with his, her or their

domestic servants, all of whom maintain a common household in a Single Family Residence on a Lot within the Subdivision.

Section 2.9 Improvement. "Improvement" or "Improvements" shall mean a Single Family Residence and garage, either attached or detached, regardless of whether the garage contains dwelling area or living space. Improvement shall not mean porches and terraces (roofed, covered or uncovered), swimming pools, spas, hot tubs, patio covers, awnings, sidewalks, walkways, sprinkler systems, roads, driveways, parking areas, fences not protruding beyond the leading edge of the single Family Residence, screening walls, retaining walls, stairs, decks, fixtures, poles, exterior tanks, exterior lighting, and landscaping.

Section 2.10 Lot. "Lot" or "Lots" shall mean anyone or more of the numbered Lots shown on the Plat specifically including any easements or reserve.

Section 2.11 Member. "Member" or "Members" shall refer to the Owner(s) of the Lot(s) within the Subdivision.

Section 2.12 Non-conforming Improvement. Any Improvement existing at the time of adoption of these Restrictions that exists on any Lot in Afton Oaks, which does not comply with the provisions of the Original Restrictions or does not comply with the provisions of these Restrictions.

Section 2.13 Owner. "Owner" shall mean the Person, or if more than one, all Persons collectively, who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder. This definition of Owner does not include those having any interest merely as security for the performance of an obligation.

Section 2.14 Person. "Person" shall mean a natural person, a corporation, a partnership, or any other legal entity.

Section 2.15 Plat. "Plat" shall individually and collectively refer to the maps or plats in Volume 35, Page 34; Volume 38, Page 33; Volume 39, Page 18; Volume 42, Page 17; and Instrument Number 986088, all of the Map Records of Harris County, Texas, and the plat of any other property that becomes subject to these Restrictions and any replat, partial replat, or amendment of any of the above described plats.

Section 2.16 Quorum. "Quorum" shall mean Owners representing fifty (50) Lots who are present, physically or by absentee ballot (if allowed for in the Bylaws), at any regular or special meeting of the Association. No proxy voting shall be permitted at any Association meeting.

Section 2.17 Single Family Residence. "Single Family Residence" shall mean a free-standing dwelling house located on a Lot, the use of which is defined in accordance with provisions of these Restrictions. As used herein, the term "Single Family Residence" shall not be construed to include any structure of a temporary character, trailer, camper, camper trailer, motor vehicle, recreational vehicle, tent, shack, garage, barn, mobile home, double-wide mobile home, modular home, house trailer, duplex house, garage apartment, apartment house, town home, rooming or boarding house or other outbuilding on the Property, except, however, with the Board's prior written approval, temporary structures may be erected for use in connection with the repair or rebuilding of Improvements on a Lot. The type of structures that are identified above that are not to be construed as a "Single Family Residence" is not and may not be construed as an exclusive list of the type of structures that are not a "Single Family Residence" .

Section 2.18 Subdivision. "Subdivision" shall mean the certain real property in Houston, Harris County, Texas, described above in the first paragraph of the Preamble.

Section 2.19 Voting Rights. "Voting Rights" refer to the number and allocation of votes to each whole Lot and Member or Owner at regular or special Association meetings as set out herein. Each whole Lot or numbered Single Family Residence, regardless of size, within the Subdivision shall have one vote with respect to Association business. If a Lot is owned by multiple Owners, such Owners shall determine amongst themselves how the single vote for that Lot shall be cast.

### ARTICLE 3.

#### TERM OF RESTRICTIONS

Section 3.1 Term. These Restrictions shall be covenants running with the land and shall be binding on all Owners, their successors and assigns affected by these Restrictions from the effective date and until the same are changed or removed in accordance with the provisions hereof. The Owners of a majority of the Lots affected by these Restrictions (regardless of the square foot area of the respective lots) may, by a written instrument executed and filed of record not more than six months prior to March 1, 2006, or executed and filed of record not more than six months prior to March 1st of any ten year period after March 1, 1996, change these Restrictions, covenants and conditions in whole or in part as to all of said property or as to any part thereof. The execution of said written instrument need not all be under one cover but may be several different instruments. These Restrictions are to be perpetual except and until modified, changed or released as herein provided for. The ten year period as herein referred to will be March 1, 2006, March 1, 2016, and any other March 1st after the lapse of ten years thereafter.

### ARTICLE 4.

#### PARTIES ENTITLED TO ENFORCE

Section 4.1 Actions to Enforce. The Association and/or any Owner of any Lot in Afton Oaks which is subject to these Restrictions or similar restrictions hereinafter imposed, may enforce these Restrictions by the prosecution of proceedings at law or in equity against any Owner or other Person so violating, threatening or attempting to violate the same, to require the removal or abatement of any such violation or to prevent the threatened or attempted violation, by temporary or final order. The violating Owner shall be responsible for paying reasonable attorneys' fees, costs, expenses, and all damages caused by any such violation.

### ARTICLE 5.

#### RESTRICTIONS

Section 5.1 Residential Use. All of the Lots affected by these Restrictions shall be improved with a single Family Residence and used solely by one (1) Household Group for residential purposes only and no part of any Lot affected hereby shall be used for any type of trade or business activities; provided, however, that an Owner of a Lot in the Subdivision may use his single Family Residence for professional or other home occupations such as the maintenance of a personal or professional library, the keeping of personal business or professional records or accounts, or for the handling of personal business or professional telephone calls or correspondence, so long as there is no external evidence thereof; such as, signs advertising a business, consultation in person with clients or customers at the Lot or significant commercial vehicular traffic.

Any Lot improved with a newly constructed single Family Residence, after the effective date of these Restrictions, shall also be improved with a private enclosed garage capable of storing at least two automobiles, which shall not exceed the height of the residence and shall comply with the set back restrictions referred to in section 5.10 hereof.

Lots with completed Improvements and Single Family Residence may be leased in their entirety for residential purposes. No garage apartment on any Lot may be leased as a separate dwelling unit. No Owner shall be permitted to lease for hotel or transient purposes, for which purpose this section 5.1 is defined as a leasing period of less than thirty (30) days. No Owner shall be permitted to lease less than the entire Lot. Every such lease shall be in writing. Every such lease shall provide that the tenant shall be bound by and subject to all of the obligations of the Owner under these Restrictions. The Owner making such lease shall not be relieved from any of such obligations and shall deliver a copy of these Restrictions to each tenant under its lease.

Section 5.2 Sales Prohibited. Without limiting the generality of section 5.1, retail or wholesale sales of any kind whatsoever on Lots are specifically prohibited: provided however each Lot may have two (2) "garage" sales or the like per calendar year. No garage or other sale shall exceed four (4) consecutive days.

Section 5.3 Boarding House Prohibited. No single Family Residence or other Improvement may be used for the operation of a boarding or rooming house, or a residence for transients.

Section 5.4 Treatment Facilities Prohibited. No single Family Residence or other Improvement may be used for any "group home", "community home", "half-way house", rehabilitation center, treatment facility or residence for unrelated individuals who are engaging in, undertaking or participating in any group living, rehabilitation, treatment, therapy or training with respect to previous or continuing criminal activities or convictions, alcohol or drug dependency or physical or mental handicaps.

Section 5.5 No Subdivision of Lots. No Lot or single Family Residence in the Subdivision may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof. Nothing in this section 5.5 shall be deemed to prevent an Owner from (a) selling or leasing all of an entire Lot, or (b) transferring or selling any Lot to more than one Person to be held by them as tenants in common, joint tenants, or tenants by the entirety.

Section 5.6 Building Materials. The exterior walls of all new Single Family Residences constructed after the effective date of these Restrictions shall be composed of eighty percent (80%) brick, brick veneer, stone, stone veneer, concrete, stucco or other masonry type of construction, not to be construed as including unpainted concrete block or common clay tile, said eighty percent (80%) being based upon the total outside wall square footage less the square footage contained in windows and doors therein. The garage required hereunder, if detached, need not have the same composition of the outer walls as the Single Family Residence but same shall be built in harmony with the residence and with a high grade of materials. The required garage, if attached, shall be built in conformity with the exterior surface of the new single Family Residence.

No asbestos siding shall be used to cover any portion of any building on the property. Roofing materials shall be of high grade materials and no roof shall be of a built-up tar and gravel type.

For any remodeling or renovation of an existing Single Family Residence that was constructed prior to the date of these Restrictions, the exterior walls, excluding glass, shall be at least fifty-one percent (51%) brick, brick veneer, stone, stone veneer, concrete, stucco or other masonry type of construction, but with it being understood that this other type of masonry construction does not include asbestos shingles or other similar fire proof boarding. No Single Family Residence shall have a roof of a built-up tar and gravel type. A detached garage (whether or not including living quarters) need not have the outer walls to comply with the masonry type construction herein provided for, but

the provision with reference to the roofs shall apply to the roofs on the garages.

Section 5.7 Animals. No barnyard animals or livestock shall be kept on any part of the Subdivision, but this shall not prohibit the keeping of dogs, cats or other usual and common household pets. Any personal pet(s) kept by an Owner on a Lot must be done in conformity with any applicable ordinances enacted by the city of Houston.

Section 5.8 Trailers and Temporary Residences. No trailer or recreational vehicle containing sleeping or kitchen facilities or, other similar vehicles shall be moved onto any Lot or Common Area for use at any time as a residence either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

Section 5.9 Building Design and Standards. The floor area of a one story Single Family Residence, exclusive of porches, garages and servants' quarters, shall contain not less than 1500 square feet and shall not exceed twenty-eight feet (28') from the grade to total height. The floor area of a two story Single Family Residence, exclusive of porches, garages and servants' quarters, shall contain not less than 2000 square feet and shall not exceed thirty-eight feet (38') from grade to total height. Those Single Family Residence with Cape Cod architecture or other one and one-half story architecture shall be classed as two stories.

Section 5.10 Set Back Restrictions. No Improvement, carport, fence or any type of building shall be located nearer to the front line and on a corner Lot not nearer to the side street line than the building set back lines as shown on the Plat, original plat or map for that section of Afton Oaks in which the Lot sits. Unless a lesser distance is designated on an original map, plat, the Plat or any Modifications of Restrictions or Amendments, no Single Family Residence may be located less than twenty-five (25) feet from the front Lot line, five (5) feet from any inside Lot line, ten (10) feet from the rear Lot line in the case of a one story dwelling and not nearer than twenty (20) feet from the rear Lot line in the case of a two story dwelling, except that said line restrictions shall not apply to a detached garage or other out building, regardless of whether it contains dwelling area or living space. The Architectural Committee provided for herein may require the detached garage or other outbuilding to be set to the rear of the Single Family Residence. The exterior rear wall of any two story garage located nearer than twenty (20) feet from the rear Lot line must be solid, and may not contain any windows or doors of any kind, unless such two (2) story garage is on a lot which does not back up, either wholly or partially, to any other single family residential Lot. This provision shall also pertain to a single story garage that is modified or expanded to a two (2) story structure.

Section 5.11 Street or Right of Way Obstructions. No fences, walls or shrub plant which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet (25') from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within 10 feet (10') from the intersection of a street property line with the edge of the driveway or pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 5.12 Displaying of Signs. No commercial signs, messages, banners or other written or graphic material (excluding "For Sale" or "For Lease" signs not more than five (5) feet square) shall be displayed on any Lot or Improvement. Nothing herein shall be construed to preclude flagpoles, security service warning signs, non-commercial flags, periodic garage sale signs, temporary signs



celebrating an event, bunting or other items of a decorative or patriotic nature from being displayed on any Lot or Improvement.

Section 5.13 Drilling and Mining. No oil drilling, oil development operations, oil refining, quarry or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. This section shall also preclude development of any subsurface substance including water.

Section 5.14 Dumping and Trash Disposal. No Lot or Common Area shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. Incinerators are strictly prohibited. All equipment for the storage or disposal of trash, garbage or other waste shall be kept in a clean and sanitary condition and maintained outside the view from the street (except on those days for scheduled removal).

Section 5.15 Lot Maintenance. Grass, weeds and vegetation on each Lot shall be kept mowed, edged and trimmed at regular intervals so as to maintain the same in a neat and attractive manner.

Section 5.16 Easements. An easement for utility installations and maintenance thereof and ingress and egress of the grantor and all others authorized to make such installations and maintain the same is reserved over the property covered by said easements as shown by the recorded Plat of such property and the easements affecting said Lots are reserved as shown on said recorded Plat and in accordance therewith, whether such easement is over the rear property line or over the side property line. Said utility easements are for all utilities now or hereafter to be installed in said locations according to custom and usage from time to time. The utilities may be placed under the streets as designated on said plat as said streets may be used for utilities as well as for traffic and other street purposes.

Section 5.17 Supplemental Deed Specific Restrictions. The Owner(s) of any Lot or Lots in said Subdivision may make additional restrictions in any deed to any particular Lot prior to the time of the sale and passing of title; provided however, said additional restrictions may not delete, subtract from or lessen the intent of these Restrictions.

Section 5.18 Restriction Violation Remedies. Violation of any restriction, condition, or covenant affecting any Lot as provided for herein shall give the Association the right to any remedies provided for herein and shall be cumulative of and in addition to all other remedies which the Association may have, and not in lieu thereof and shall be in addition to the remedies of the other property owners affected by these Restrictions and covenants.

Section 5.19 Storage of Vehicles. No boats, trailers, campers, recreational vehicles of any kind, camper tops or rigs off the truck, boat rigging or disabled or non-operating vehicles of any type shall be parked or stored permanently or semi-permanently on any public street, sidewalk, right-of-way, or front or side yard area within view of any street or other Lot in Afton Oaks. Operative boats and recreational vehicles may only be semi-permanently stored on driveways. Permanent or semi-permanent storage of vehicles or items described in this section 5.19, including the permanent storage of boats and recreational vehicles, must be reasonably screened from public view. Reasonably screened shall mean stored within the garage or behind a fence or security gate which does not protrude beyond the front leading edge of the single Family Residence. If there is a conflict between this section 5.19 and any public ordinance, rule or regulation, the most restrictive will control.

For the purposes of these Restrictions, the word "semi-permanently" shall be defined as remaining on the Lot for a period

of less than seven (7) days during any given calendar month. "Permanently" shall be defined as remaining on the Lot for a period in excess of seven (7) days during any given calendar month.

A vehicle or boat will be presumed disabled or non-operative if it does not have a current Texas inspection sticker or registration and tags placed on the vehicle or trailer as designated by the State of Texas, or if a tire or tires are flat or missing.

Section 5.20 Fences. No fence or wall shall be constructed or erected past the front leading edge of the single Family Residence.

Section 5.21 Nuisance. Nothing shall be done or placed upon any property within the Subdivision that is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others.

Section 5.22 Maintenance of Improvements. All Improvements or other structures placed on a Lot that are visible from another Lot in the Subdivision or from the street shall be maintained in a neat and attractive manner. Neat and attractive shall mean: 1.) maintaining all painted surfaces such that bare or raw surfaces do not become exposed and 2.) repairing damage caused by storm, fire, insects, flood, moisture or mildew with permanent building materials matching the current materials and paint on the Improvement or structure. All such repairs shall be completed within six (6) months of notification from the Association.

## ARTICLE 6.

### ARCHITECTURAL COHHITTEE

Section 6.1 Architectural Committee. The Association shall have an Architectural Committee which shall consist of three (3) full-time Members and one (1) alternate Member who shall be natural persons, and who shall be elected by the membership for a term of one (1) year in the same manner as the Board as provided for in the Bylaws. A vacancy on the Architectural Committee shall first be filled with the alternate and successive vacancies shall be filled by a special election called by the Board in accordance with the Bylaws. The Board may nominate a candidate to fill the vacancy but the members shall have the right to nominate other candidates from the floor in accordance with the Bylaws. The term "Committee" as used hereinbelow in this Article shall mean or refer to the Architectural Committee. The committee shall have the authority from time to time to make, amend and rescind such reasonable rules and regulations as may be necessary to clarify the provisions of this Article 6 and aid in the administration of this Article 6, provided that such rules and regulations are consistent with the rights and duties established by these Restrictions and are uniformly applicable to all Lots in Afton Oaks.

Section 6.2 Committee Review. The Committee's review and approval shall be limited to:

- A. Height restrictions regarding Improvements;
- B. Single Family Residence minimum square footage requirements;
- C. Minimum Building Materials requirements for Improvements;
- D. Adherence to building setback lines; and
- E. Carports as to compliance with set back lines.

Notwithstanding the foregoing, Committee review and approval shall not be required for A) addition to; B) placement of; or C) alteration of any Improvement which does not:

1. Increase the living area of single Family Residence (for this purpose living area is defined to be fully enclosed spaces suitable for air conditioning, heating and human occupation);

2. Decrease the exterior surface Building Material of an Improvement to a level below that required in these Restrictions;

3. Reduce the square footage of the Single Family Residence below that required in these Restrictions; or

4. Cause any portion of Improvements or carports on the Lot to violate the minimum setback lines.

Any Owner may, at their sole option, submit such projects (in the same manner as hereinafter set forth) for Architectural Committee approval in order to avoid having to obtain an "at risk" building permit from the city of Houston. Provided that an Owner elects to seek such non-mandatory Architectural Committee approval and completes the project in compliance with the plans approved by the Architectural Committee, then the Association and/or any Owner shall be deemed to have waived its rights to claim that the final project is in violation of these Restrictions.

Section 6.3 Seeking Architectural Committee Approval. When seeking Architectural committee Approval, building plans, specifications and plot plans showing the location of such building must be submitted for review. The Architectural committee will be reviewing only for compliance with:

- A. Height restrictions regarding Improvements;
- B. Single Family Residence minimum square footage requirements;
- C. Minimum Building Materials requirements for Improvements;
- D. Adherence to building setback lines; and
- E. Carports as to compliance with set back lines.

Nothing herein may be construed to require a Member to submit plans drawn by an Architect or other such professional. It is specifically stipulated that each Member submitting plans is solely responsible for their adequacy. Nothing herein may or should be construed as approval of builders, building materials, structural components or the adequacy of a design to fulfill the function desired by the Member submitting the plans. It shall always be the responsibility of each Member to insure that approved plans are complied with since Architectural Committee approval does not waive the Association's or an Owner's right to enforce these Restrictions should a project not be built in accordance with the approved plans.

Section 6.4 Committee Approval. Any plans submitted to the Architectural Committee must be approved in writing by at least two of the members of the Committee prior to obtaining required permits and/or the commencement of construction. The Committee at any time may provide such rules and regulations as it sees fit as to the Committee's meetings and as to when and how and under what circumstances the Committee will undertake joint consideration and examination of submitted plans or other actions. The delivery of proposed plans may be made to the Management Firm, if applicable, or to any member of the committee and the same shall be deemed to be submission to the full Committee. For the purpose of this section 6.4, delivery shall be deemed to have been made when the submission is deposited in the United States Mail, Registered, Return Receipt Requested, postage prepaid or when the submission is hand delivered to one of the persons permitted to accept delivery and a receipt is issued for the submission. In the event that said committee fails to approve or disapprove such plans within 30 days

after said plans, plot plan and specifications have been submitted to it, or in the event that no suit or other action permitted by these Restrictions to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion of such building or alteration, Architectural Committee approval will not be required and this covenant will be deemed to have been fully complied with.

Section 6.5 Variances. Recognizing that some situations may exist, occur or justify the granting of a variance under Section 6.2 of these Restrictions, excluding front set back lines as to the location of the Single Family Residence, the Architectural Committee, with Board approval, may grant a variance to these Restrictions for the following reasons:

A. To avoid costly and protracted litigation which in the opinion of the Board or retained Legal Counsel does not justify such cost or time or that the probability of prevailing in such a suit is below normal risk; or

B. Special hardship conditions such as topography, natural obstructions or other relevant considerations.

Economic hardship shall not be the sole justification for granting the variance.

Section 6.6 No Transfer or Assignment of Responsibilities . None of the members of the Architectural Committee shall be entitled to any compensation for services performed pursuant to this covenant. The duties of the duly elected members of the Architectural Committee shall not be delegated, designated or otherwise transferred to any person or persons not duly elected by the Owners to such committee.

Section 6.7 Non-Liability for Committee Action. Neither the Association, its Board, the Committee or the members thereof shall be liable for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the committee unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of an Improvement or modification to an Improvement on a Lot be deemed approval of the Improvement or modification of the Improvement from the standpoint of safety, whether structural or otherwise, or conformance to building codes or other governmental laws or regulations.

Section 6.8 Design Guidelines. Upon receiving approval in writing by Members holding at least fifty-one percent (51%) of the aggregate votes of the Lots in the subdivision which includes those areas described in section 8.13 hereof which have adopted these Restrictions, the Association may adopt and approve Design Guidelines which expand the duties and responsibilities of the Architectural Committee and outlines minimum acceptable construction standards for the Subdivision. If Design Guidelines are approved and they impose requirements that are more stringent than the provisions of these Restrictions, the provisions of the Design Guidelines shall control.

PRIOR TO ACQUIRING ANY INTEREST IN A LOT , EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER SHOULD CONTACT THE BOARD AND OR CHECK THE HARRIS COUNTY REAL PROPERTY RECORDS TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES, IF ANY, WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT .

NO DESIGN GUIDELINES SHALL BE APPROVED FOR THE SUBDIVISION UNLESS APPROVED IN WRITING BY MEMBERS HOLDING AT LEAST FIFTY-ONE PERCENT (51%) OF THE AGGREGATE VOTES OF THE LOTS IN THE SUBDIVISION WHICH INCLUDES THOSE AREAS DESCRIBED IN SECTION 8.13 HEREOF WHICH HAVE ADOPTED THESE RESTRICTIONS. AFTER THE DESIGN GUIDELINES ARE ADOPTED IN ACCORDANCE WITH THIS SECTION 6.8, THEY MAY BE RESCINDED IN WRITING BY MEMBERS HOLDING AT LEAST FIFTY-ONE PERCENT (51%) OF

THE AGGREGATE VOTES OF THE LOTS IN THE SUBDIVISION WHICH INCLUDES THOSE AREAS DESCRIBED IN SECTION 8.13 HEREOF WHICH HAVE ADOPTED SUCH DESIGN GUIDELINES. THE SIGNATURES OF THE MEMBERS WHO APPROVE THE ADOPTION OR RESCINDING OF THE DESIGN GUIDELINES NEED NOT BE NOTARIZED BUT SAME MUST BE RECORDED IN THE REAL PROPERTY RECORDS OF HARRIS COUNTY, TEXAS AND ACCOMPANIED BY A SIGNED AND NOTARIZED CERTIFICATE FROM AN AUTHORIZED OFFICER OF THE ASSOCIATION .

## ARTICLE 7

### COMMON ASSESSMENTS AND BUDGET

Section 7.1 Payment of Common Assessments. Each Owner by acceptance of a deed for any Lot in the Subdivision, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association an annual Common Assessment, hereinafter sometimes referred to as Assessment, such Assessments to be established as hereinafter provided and administered by the Bylaws. No Owner is or shall be exempt from such obligation without being specifically granted a written waiver from the Association Board, subject to the provisions hereinafter provided in Section 7.4. Subject to the provisions of Section 7.4, any assessment not paid within thirty (30) days after the due date shall bear interest from the date due until paid at the rate of ten percent (10%) per annum and the owner shall be responsible for paying the reasonable attorneys' fees, costs and expenses that are incurred as a result of their failure to pay the Assessment.

Section 7.2 Establishment of Assessment. At least forty- five (45) days prior to January 1, 1997 and at least forty-five (45) days prior to each succeeding January 1, the Board shall provide written notice to each Member of the proposed budget and proposed Assessment for the coming fiscal year. Included in such notice shall be the meeting date and time to discuss, amend or approve the proposed Budget and Assessments. For the fiscal year effective with the date of these Restrictions, (March 1,1996) the rate shall be three hundred dollars (\$300.00), prorated to December 31, 1996. Each proposed budget shall set forth, in sufficient detail for review, the amount that the Board feels is required for the proper operation, management, and maintenance of the Subdivision, including a 15% allowance for contingencies. Failure or delay of the Board to prepare any annual budget or to deliver copies of notices of the new Common Assessments to each Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay Common Assessments whenever said Common assessments are determined. In the event of any delay or failure to establish any annual budget, each Owner shall continue to pay the Common Assessment as provided for in the Bylaws at the rate established for the previous fiscal year until a new budget is established or approved; however, if the previous fiscal year's Common Assessment level contained any extra charges, beyond what was budgeted for that year, i.e., repair or capital improvements to Common Areas, litigation expense to enforce these Restrictions, or expenses to defend or settle a suit against the Association, then such extra charges shall be deducted before setting the new Common Assessment level. The Assessment shall be fixed at a uniform rate for all Lots.

Section 7.3 Adoption of a Budget and Assessment Level. For any budget and Assessment providing for an increase of more than five percent (5%) from the previous fiscal year to become effective, a Quorum of Members must be present at the meeting, as provided for in Section 7.2 above, and a majority of those Members must approve both the budget and the Assessment. Proposed budget and Assessments not providing for an increase of more than five percent (5%) shall be deemed approved without a vote of the membership.

Section 7.4 Hardship Exemption. Any Owner who is a full time resident of the Subdivision may make written application to the Board for a hardship exemption and relief from paying all or a portion of the annual Common Assessment. Each applicant shall supply reasonably full particulars to allow the Board to make a decision on the exemption request. The Board at its sole

discretion may grant a full waiver, partial waiver or deny the request in its entirety. Each waiver and partial waiver that is granted may not extend beyond the end of the then current year. Any application for renewal of a waiver or partial waiver shall be made in writing to the Board at the Association's address prior to October 15th of the year proceeding the year for which the renewal of the waiver or partial waiver is requested. Any exemption shall constitute a valid lien for the amount not paid on the property, but such lien shall not accrue interest in the manner described elsewhere in these Restrictions. Any misrepresentation by an Owner receiving a full or partial exemption pursuant to this Section 7.4 shall be cause for the Board to terminate such exemption after mailing notice outlining the facts and circumstances of such termination to the Owner. Notwithstanding the waiver of interest heretofore set out, any termination arising from an Owner's misrepresentation shall subject all amount(s) due to the Association to accrue interest from the date such amount(s) were originally due until the date such amount(s) are paid.

Section 7.5 Remedies to Enforce Assessments. Each Assessment levied hereunder shall also be a separate, distinct, and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, the Board, in addition to any other remedies provided under these Restrictions or by law or in equity, may enforce such obligation on behalf of the Association by suit, by filing of a lien as hereinafter provided, or by any other means provided by these Restrictions, or by all of the above.

Section 7.6 Notice of Lien. In addition to the right of the Board to enforce Assessments in the manners described herein, the Board may elect to file a claim of lien against the Lot of the delinquent Owner or Member by recording a notice (a "Notice of Lien") setting forth:

- A. the amount of the claim of delinquency;
- B. the interest that has accrued and the costs of collection, expenses and attorneys' fees that have been incurred;
- C. the legal description and street address of the Lot against which the lien is claimed, and
- D. the name of the Owner thereof.

Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of the release of such lien.

Section 7.7 Non-judicial Foreclosure. Nothing in these Restrictions shall allow, provide for or permit foreclosure by non-judicial means.

Section 7.8 No Effect of Violation on Rights of First Mortgagees. No violation by an Owner of the provisions of these Restrictions or any amendment of these Restrictions shall affect the lien of any First Mortgagee presently or in the future placed of record or otherwise affect the rights of such First Mortgagee under any such Mortgage or holder of any such lien or beneficiary of such Mortgage ("First Mortgagee"); and any such Mortgage or lien may be enforced in accordance with its terms, subject, nevertheless, to the provisions contained in these Restrictions.

Section 7.9 Priority of Mortgagee Over Assessments. The liens described in these Restrictions and the superior title herein reserved shall be subordinate to the liens of any First Mortgagee.

Each First Mortgagee who obtains title to a Lot pursuant to the remedies provided for in the Mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot that accrued before the time such First Mortgagee acquired title to such Lot. No such sale or transfer shall relieve such First Mortgagee acquiring title to a Lot from liability for any Assessment thereafter becoming due or from the lien thereof or from compliance with these Restrictions. Any other mortgage, sale or transfer of a Lot shall not affect the Association's lien for Assessments.

## ARTICLE 8.

### GENERAL PROVISIONS

Section 8.1       Invalidation. Invalidation of any term or provision of these Restrictions by judgement of any court or otherwise shall in no way affect any other provision, which shall remain in full force and effect, except as to any terms and provisions which are invalidated.

Section 8.2       Grammar. The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, other entities or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

Section 8.3       Headings. The headings to sections of these Restrictions are for convenience only and shall not be used to construe, interpret or limit the meaning of any terms or provisions hereof.

Section 8.4       Application of Restrictions. The terms and provisions of these Restrictions shall apply to, be binding upon, and inure to the benefit of the Association, all Owners of Lots or any other property in Afton Oaks, and their successors and assigns, and all occupants of any Single Family Residence or other Improvement.

Section 8.5       Existing Non-conforming Improvements.

A. Non-conforming Improvements in existence more than six (6) months prior to the time of the filing of these Restrictions in the Official Public Records of Real Property of Harris County, Texas, shall be permitted to continue. Such Non-conforming Improvements shall not, however, constitute a waiver of these Restrictions with respect to any Lot on which such Non-conforming Improvements exist, and they are not a waiver with regard to any other Lots or Non-conforming Improvements in the Subdivision.

B. In the event any replacement, alteration, reconstruction, remodeling or rebuilding of any Non-conforming Improvement is undertaken after the recording hereof, such replacement, alteration, reconstruction, remodeling or rebuilding shall comply completely with the terms of these Restrictions; provided however, that any Non-conforming Improvement which is destroyed or damaged by fire, storm or other Act of God, may be rebuilt with the same design and materials existing immediately before such destruction or damage, subject to obtaining the necessary permits from the city of Houston.

Section 8.6       Notice of Sale or Lease. In the event an Owner sells his Lot, the acquiring Owner shall give to the Association, in writing, the names of the new Owner of the Lot. Until such notice is furnished the Association shall not be held responsible for incorrect notices and all notices provided by the Association to the address of the last known Owner shall be deemed to have been properly delivered.

Section 8.7 Limitation on Liability. Neither the Association, the Board, any member of a duly constituted committee of the Association and/or the Board, or any officer, agent, or employee of any of the same acting within the course and scope of their respective duties shall be liable to any person(s) for any reason(s) or for any failure to act if the action(s) or failure to act was in good faith and without malice.

Section 8.8 Signatories. The undersigned are all Owners of Lots in Afton Oaks. By their signature hereon, the undersigned represent that they own the Lot described next to their name and that they are executing these Restrictions in consideration of the mutual benefits to be derived by their property and the other property in Afton Oaks.

Section 8.9 Multiple Counterparts. These Restrictions may be executed in multiple counterparts. It shall not be required that all Owners sign the same counterpart. Each Owner agrees to be bound by The First Amended and Restated Deed Restrictions for Afton Oaks when the Original Restrictions are amended. After all such counterparts have been executed, the undersigned, singularly and collectively, authorize the Board of the Association to remove all pages containing signatures from the various counterparts and attach such signature pages to one complete copy of these Restrictions for the purpose of recording the same in the Official Public Records of Real Property of Harris County, Texas.

Section 8.10 Notices. Any statement, notice, or other communication provided or permitted to be given hereby shall be in writing and shall be deemed sufficiently given or rendered if hand delivered, or delivered or deposited in the United States mail, addressed to the Owner's Lot, or at such other address as such Owner shall designate from time to time by written notice.

Section 8.11 Section Approval. Upon obtaining the signatures of at least a majority of the Owners in any Section of Afton Oaks, a counterpart of these Restrictions containing all such signatures from such section may be recorded separately and shall be effective as to such section upon recordation even though the signatures of at least a majority of the Owners of the other Sections have not yet been obtained. At such time as at least a majority of the Owners of other Sections have signed these Restrictions, subsequent counterparts hereof containing all such signatures from each such other Sections shall be recorded and shall thereupon be effective as to each such sections.

In the event any court, by final judicial order, finds that any Section of Afton Oaks failed to have the proper number of votes or signatures to make these Restrictions effective as to that Section, or was without the right to amend restrictions on that section, that Section shall be deemed to be excluded from these Restrictions, but the other Sections and Owners in Afton Oaks shall be deemed to have timely and properly executed these Restrictions and shall not be affected by any such court order. In the event of such Section being excluded from these Restrictions, the Original Restrictions shall continue to apply to that Section. No signature hereto may be revoked or canceled, but in the event these Restrictions are not recorded in the Real Property Records of Harris County, Texas on or before February 28, 1996, all signatures shall be deemed canceled.

When these Restrictions have been adopted, all such Sections of Afton Oaks and Described Properties shown on Exhibit "A" that have approved these Restrictions, together with Kettering Oaks, if they have adopted identical or similar Restrictions, shall thereafter vote collectively to amend, modify, terminate, or cancel these restrictions without regard to the number of Lots in any particular section or area.

Section 8.12 Management of the Association. The Association shall be managed by the Board in accordance with the Articles of Incorporation and Bylaws, which may be amended from time to time in accordance with the provisions set forth in such instruments or, in



the absence of such provisions, in accordance with the applicable statutory provisions for the State of Texas.

Section 8.13 Annexation. The Association may add all or a portion of the land described as Kettering Oaks Subdivision, Section 5 and Section 7 of Afton Oaks and Greenwood Subdivision, all in Harris County, Texas (the "Added Property"), to that portion of Afton Oaks which is initially covered by these Restrictions, at any time or from time to time.

Section 8.14 Judicial Review. Nothing contained in these Restrictions shall be interpreted or construed to prohibit judicial review of any decision or other action made or taken pursuant to these Restrictions.

Dated to be effective the 28th day of February, 1996.

[Signatures, Notaries, and Acknowledgments]

EXHIBIT "A"

A certain tract or parcel of land located wholly within Harris County, Texas and being bounded on the north by the most southerly line of Afton Oaks Section 4, a subdivision established pursuant to Instrument No.986088, being bounded on the south by the most northerly line of Afton Oaks, a subdivision shown on the Plat in Volume 35, Page 34 of the Map Records, being bounded on the west by the easterly line of Greenwood Addition, a subdivision shown on the Plat in Volume 37, Page 58 of the Map Records and being bounded on the east by the westerly line of Kettering Oaks, a subdivision shown on the Plat in Volume 42 Page 29 of the Map Records, all instruments being of record in Harris County, Texas Real Property Records.