

COPY

DECLARATION OF PROTECTIVE COVENANTS

FOREST GLEN SOUTH ADDITION
PHASES 1 & 2

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF SMITH

That TYLER VENTURES, INC., a Texas corporation, desiring, as the present owner of the Property (as hereinafter defined), to adopt a uniform plan for the orderly development of the Property, hereby imposes upon the Property the following covenants, restrictions, charges, easements and liens (hereinafter referred to together as the "Covenants") which shall run with the land and be binding upon any Owner (as hereinafter defined), tenant or mortgagee of any Lot (as hereinafter defined) or structure on the Property and upon the respective heirs, legal representatives, successors and assigns of any such Owner, tenant or mortgagee.

ARTICLE 1

DEFINITIONS

The following terms, when used in these Covenants, shall have the following meanings:

- A. "ACC" shall mean the Architectural Control Committee, as designated by the Controlling Party and as more fully described in ARTICLE V. The initial address of the ACC for notice purposes is as follows: 10150 Ranch Road, Tyler, Texas 75703.
- B. "Assessments" shall mean any Maintenance Assessments (as hereinafter defined), and/or Wall Assessments (as hereinafter defined).
- C. "Association" shall mean FGS Homeowners Association, Inc., a non-profit corporation to be established under the laws of the State of Texas, as well as the successors, legal representatives or assigns of FGS Homeowners Association, Inc. The initial address of the Association for notice purposes is as follows: 10150 Ranch Road, Tyler, Texas 75703.
- D. "Board of Directors" shall mean the Board of Directors of the Association, as more fully described in Section 8.3. The initial address of the Board of Directors for notice purposes is as follows: 10150 Ranch Road, Tyler, Texas 75703.
- E. "Common Areas" shall mean all land, including, but not limited to the Landscaped Area, the Private Streets, amenities, easements and rights comprising a part thereof, located on, appurtenant to or near the Property, and which have been or will be conveyed to the Association by the Developer for the common use, enjoyment and benefit of the Owners (as hereinafter defined). It is expressly agreed that the term "Common Areas" may include rights-of-way in and to certain properties including, but not limited to, Farm to Market Road 2868 and County Road 139.
- F. "Controlling Party" shall mean the Developer until such time as the Developer has conveyed one hundred percent (100%) of the Lots to other Owners. Upon such conveyance the term "Controlling Party" shall mean the Association.
- G. "Developer" shall mean Tyler Ventures, Inc., a Texas corporation, and its successors, legal representatives or assigns, other than Owners.
- H. "Development Guidelines" shall mean those guidelines as contained in ARTICLE II herein.
- I. "Director" shall mean a member of the Board of Directors of the Association.

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3. "Improvements" shall mean all improvements constructed upon any Lot, including, without limitation, all buildings, garages, driveways, sidewalks, swimming pools, recreational courts and any other structure associated with the development of any Lot.

K. "Landscaped Area" shall mean those certain parcels or strips of land as may be designated by the Controlling Party and including, without limitation, the following areas: (1) adjacent to the Property in the rights-of-way of Farm to Market Road 2868 and County Road 139; and (2) the main entrance to the Property. The Landscaped Area may be required by the Landscape Plan (as hereinafter defined) and/or the Controlling Party to be landscaped with acceptable plant and/or other landscape materials and maintained and irrigated with the intent of enhancing the Property and preserving the Landscaped Area.

L. "Landscape Plan" shall mean the plan, if any, for landscaping the Landscaped Area as established by the Developer, as same may be modified from time to time by the Developer.

M. "Lot" shall mean any of the lots, designated as such on the Plat (as hereinafter defined), within the perimeter boundaries of the Property, which can be used, under applicable law and any applicable restrictions regarding the improvement or use thereof, for the construction of single family residences.

N. "Owner" shall mean the legal title holder of record, whether one or more persons, of any Lot, but excluding any person having such interest merely as security for the performance of any obligation, but including, without limitation, (1) any person or entity holding legal title as trustee, (2) an individual or entity holding legal title as an heir, legal representative, successor or assign of a previous Owner, and (3) all other persons, acquiring or succeeding to the title of the Owner by sale, grant, will, foreclosure, execution or by any legal process or by operation of law or in any other legal manner.

O. "Plat" shall mean the subdivision plat of any portion of the Property presently on file in the Map and Plat Records of Smith County, Texas, and any other plat or plats of all or any portion of the Property now or hereafter filed of record in the Map and Plat Records of Smith County, Texas (as such plat or plats may be amended from time to time).

P. "Private Street" shall mean any lot, designated as such on the Plat, within the perimeter boundary of the Property, which can be used, under applicable law and any applicable restrictions regarding the improvement or use thereof, for the construction of private residential streets and is intended by Developer to be so used.

Q. "Property" shall mean:

- (1) The land described in the Final Plat Forest Glen South Phases 1 and 2, as recorded in Cabinet D, Silde 57-D, of the Plat Records of Smith County, Texas, a copy of which is attached hereto as Exhibit "A"; and
- (2) Additional land subjected to this Declaration, if any.

R. "Setback Areas" shall mean the area described in Section 4.4 (including building setback areas and surface parking setback areas) upon which no Improvements shall be permitted.

S. "Wall" shall mean the wall/fence to be constructed by the Controlling Party along Farm to Market Road 2868 and County Road 139 and the wall/fence to be constructed of brick, or wood (with ACC approval), by Owners of lots adjoining the perimeter of the Property.

T. "Wall Lot" shall mean any of the Lots which abut the Wall.

ARTICLE II

USES

2.01 Permitted Uses. All Lots shall be used solely for single family residential purposes and, except as herein expressly provided, no structure other than a single family dwelling with permanent accessory structures shall be constructed or permitted to remain on any Lot. As

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contemplated above, accessory structures, such as servants quarters, garages, porte cocheres, cabanas, and tool sheds, shall be permitted, however, said structures shall be subject to the prior written approval of the ACC, must be of the same material as the house on the same Lot and, in any case, may not be portable or constructed of metal or plastic.

2.02 Prohibited Uses and Activities. The following uses and activities are prohibited within the Property except, if applicable, for certain reasonable activities and uses which may exist during any reasonable period of construction of Improvements on any portion of the Property:

- A. Any illegal, noxious or offensive activity of any kind;
- B. Any use which is offensive by reason of odor, fumes, vibrations, dust, smoke, radiation, noise or pollution, or that is hazardous by reason of excessive danger of fire or explosion, or that is, in the opinion of the Association, unsightly (such as, but not necessarily limited to, vehicle repair);
- C. Any use which may cause or produce a nuisance as to any other portion of the Property;
- D. Any commercial or business use, including, without limitation, trailer park, slaughterhouse, tannery, cannery, barn, stables, cemetery, junkyard, scrap metal yard or waste material collection, storage and distribution, dumping disposal, incineration or reduction of garbage or refuse, fire or bankruptcy sale or auction house operation, or establishment which sells alcoholic beverages;
- E. The keeping of livestock, poultry, swine or other animals or fowl of any kind, including, without limitation, horses and pot-belly pigs; however, Owner may keep bonafide household pets if confined to a fenced area or properly restrained;
- F. Warehousing of goods or materials for commercial purposes;
- G. Exterior storage of any goods and materials;
- H. Storage of oil, gasoline, or other flammable liquids, except for those in connection with normal household use;
- I. Overnight parking or storage of campers, motor homes, boats or trailers, unless same are located behind the rear wall of the residence of the property upon which such vehicle may be located and within an area fenced by a solid fence (brick, stockade, etc.);
- J. Overnight parking or storage of trucks larger than one ton in size;
- K. Overnight parking of any vehicle on a street;
- L. Any oil exploration, any drilling or development operations, oil refining, quarrying, or mining operations of any kind; placement of any oil wells, tanks, tunnels, mineral excavations or shafts, or any operating derrick or other structure designed for use in boring for oil or natural gas; and
- M. The keeping of automobiles or other vehicles which are not in roadworthy condition or which do not have a current inspection sticker or license plates.
- N. The burning of any trash, brush, trees or other waste material, unless prior approval is obtained from the Developer or, upon activation, the Homeowners' Association.
- O. The installation, maintenance, or use of an outdoor clothesline.
- P. The operation or use on any street or common area in the subdivision of any unlicensed motorized vehicle including, but not limited to, go-carts, three-wheelers, four-wheelers, dirt bikes, scooters, etc.

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ARTICLE III

CONSTRUCTION AND ALTERATION

3.01 Construction Standards. The construction and alteration of any improvement shall meet the standards set forth in these Covenants and the Development Guidelines as set forth in Article IV herein. When a construction material is specified herein, another material may be used in lieu thereof provided that such material is determined by the ACC to be equivalent to, or better than, the specified material.

3.02 Structures. Unless otherwise approved by the ACC, the design of all building, parking and other structures shall be in keeping with the Development Guidelines and the standards set forth in these Covenants and consist of no less than seventy percent (70%) brick or acceptable stone veneer. The design character of structures shall be such that it is aesthetically pleasing and consistent on all sides, and it is consistent and harmonious with other structures on adjacent and surrounding Lots. Design characteristics shall exhibit uncluttered forms of a nature devoid of inappropriate ornamentations. Building material and color selection shall achieve visual order through the consistent use of a limited mix of dominant materials of a harmonious color range on any structure or groups of structures. These materials shall preferably be brick, stucco, wood shingles, glass or glazing, and semi-transparent stained vertical grooved wood or lapped wood siding. Pre-engineered, fabricated metal outbuildings are permitted upon approval by the ACC.

3.03 Signs. No signs shall be erected or maintained on any Lot except for a "For Sale" or "For Rent" sign, which shall not exceed five (5) square feet in size or a sign owned by the Association or the Developer.

3.04 Initial and Subsequent Construction. Each Owner shall take care not to cause damage to any Private Street, public street, easement, utility, Landscaped Area, Common Areas or any portion of or Improvements on the Property during construction or alteration of any Improvements on any Lot.

3.05 Indemnity. In the course of construction or alteration of any Improvement on any Owner's Lot, such Owner shall repair any damage caused to any Private Street, public street, sidewalk, easement, utility, the Landscaped Area, Common Areas, or any other portion of, or Improvements on, the Property. Each Owner shall be solely responsible for the compliance of its plans and specifications with all applicable laws, rules and regulations. Each Owner shall indemnify and hold harmless the Developer and the Association from any and all costs, losses, damages and attorneys' fees incurred by the Developer or the Association in connection with or arising out of the construction or alteration of any Improvements on such Owner's Lot including but not limited to possible soil erosion resulting in damages to downstream property owners.

3.06 Temporary Structures. No temporary building or structure other than sales offices, construction offices and structures for related purposes during the construction period shall be installed or maintained on any Lot. All temporary structures used for construction or sales purposes must receive approval by the Controlling Party with regard to location and appearance, and must be removed promptly upon completion of construction or when otherwise no longer needed and that portion of the Lot from which same are removed, must be restored to its original condition or such condition as is otherwise required by these Covenants.

3.07 Culverts. Prior to installation, Owner must obtain approval from the Developer regarding the number and location of driveway culverts. This must be done before commencing construction of any Improvements. The ends of driveway culverts shall be of the same material (ie: brick or stone) used in construction of the residence on the Lot.

3.08 Driveways. Driveways of design and in location approved by the ACC and being of concrete and no less than twelve feet (12') in width shall be constructed as a part of the development of each Lot.

3.09 Sprinkler System. The Owner of each Lot shall have installed a sprinkler system in the front and side areas prior to the initial occupancy of a residence located thereupon.

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ARTICLE IV

DEVELOPMENT GUIDELINES

4.01 Further Subdivision. No Owner shall subdivide any platted Lot unless approved in writing by the Controlling Party.

4.02 Easements. Perpetual easements in, on and under Lots of width and extent shown on the Plat shall be available for use by the Controlling Party and the Owners for purposes of installing and maintaining utility services, and such other purposes as are contemplated by the Plat. The easements will be governed pursuant to Article VII herein. No structure shall be constructed or permitted to remain on or over any easement as shown on the Plat, and no party shall be liable to the Owner of such Lot for damages to any structure by reason of its use of such easement as contemplated hereby.

4.03 Frontage. Residential structures shall face the street upon which the subject Lot fronts. As between the two streets to which a corner Lot fronts, such Lot shall be deemed to front the street with respect to which there is the shortest linear abutment. In the event a Lot should have two (2) alternative frontage arrangements pursuant to this Section 4.03, the Controlling Party shall designate the required frontage arrangement for that particular Lot.

4.04 Set Back Areas. Any and all building lines as shown on the Plat shall be observed. In addition:

A. No fence or wall shall be constructed or permitted to remain on any Lot within any building setback line area unless approved in writing by the Controlling Party; and

B. No structure shall be constructed or permitted to remain on any Lot nearer than forty feet (40') from the front boundary line, fifteen feet (15') from either side boundary line, or twenty-five feet (25') from the rear boundary line.

4.05 Square Footage. All residential dwellings shall contain not less than 2,500 square feet of living area, and shall have a garage with a capacity for not less than two (2) automobiles. No residential dwelling shall exceed two and one-half (2-1/2) stories in height.

4.06 Temporary Structure as a Residence. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used at any time as a residence, either temporarily or permanently, nor shall any structures, of a temporary character be permitted on any Lot.

4.07 Garages. All garages shall have either a side or rear entry.

4.08 Roofing. Any building constructed on a Lot shall have high quality wooden, shake, tile, or other heavy duty composition shingles (ie: 240 lb., 25-year), and the minimum roof pitch shall be 8/12.

4.09 Tanks and Wells. No septic tanks shall be installed or permitted to remain on or under any Lot. No individual water wells shall be drilled, dug, maintained or operated by any Owner, unless all appurtenant equipment is constructed so that same protrudes above ground level no more than eighteen inches (18") or, is camouflaged in a manner approved in writing by the ACC.

4.10 Antennas. No television, radio or other similar antennas, mast, or receiving or sending apparatus shall be erected on any portion of any Lot whatsoever. No Lot or Improvement shall be used as a base for any type of radio, television, or similar broadcasting system. Satellite dishes are permitted but must be hidden from the view of adjoining street(s) and Lot(s).

4.11 Utilities. Easements and access easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Except as to special street lighting or other aerial facilities which may be required by any utility company or which may be installed by the Controlling Party pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Property, whether upon

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individual Lots, easements, streets or rights of ways of any type, either by the utility company or any other person or entity, including but not limited to any person owning or acquiring any part of the Property, and all utilities, service facilities (including but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground. Within the set back area for each Lot, an easement and right-of-way is reserved for the Association and/or the Developer to properly facilitate and carry out any reasonable maintenance.

4.12 Rooftop Solar Facilities. No solar heating or electricity systems of any kind shall be attached to or placed on any roof of any Improvement constructed or placed on any Lot.

4.13 Fences. Any fences, gates or similar structures located on a Lot must be built of wood or a material that is determined by the ACC to be equivalent to, or better than, wood such as wrought iron, brick or vinyl. Fences, gates or other similar structures located on a Lot may not be constructed of chain link, barbed wire or other metal material. Fences on a Wall Lot shall be constructed in accordance with these Covenants prior to occupancy of a residence constructed thereon.

4.14 Mailboxes. All mailboxes must be constructed with the same brick or stone as used for the residence on that Lot (other than the mailbox door). Each mailbox will be located adjoining the street on which the Lot faces and will be in a location consistent with that of the other Lots.

4.15 Edging and Retaining Walls. All edging and/or retaining walls utilized on any Lot or dividing any two (2) Lots must be of brick or stone material consistent in nature with that utilized on the adjoining house or other material approved by the ACC. Under no circumstances shall wooden retaining walls or creosote logs be utilized in retaining walls or edging materials.

4.16 Drainage. It is intended that the Property be developed in an orderly manner such that the Owner of each Lot shall absorb its share of drainage responsibility with respect to the surface water running across, from or to the Property as a whole. Without limiting the remedies otherwise described herein, to the extent any Lot should be developed in a manner which disproportionately diverts surface water onto another Lot or is otherwise developed so as to not absorb its proportionate share of responsibility for the Property's surface water drainage, the Controlling Party shall be entitled to require the Owner of any such Lot to rectify such situation and, if not timely rectified, to itself effectuate such maintenance or repairs as may be necessary to more equitably resolve any drainage problems. Without limiting the foregoing, the Controlling Party shall be entitled to install drainage devices, culverts or other arrangements as the Controlling Party may, in its sole discretion, deem necessary. To the extent the Controlling Party deems the necessity for such maintenance to be the responsibility of only certain of the Lots, then, the Controlling Party may effectuate a special Maintenance Assessment against only those Lots. To the extent the Controlling Party deems any such drainage maintenance to not be attributable to only certain Lots, but, rather, the Property as a whole, then, any such maintenance may be effectuated by way of general Maintenance Assessments described in Section 9.1 hereof.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

5.01 Architectural Control Committee. The ACC shall be composed of three (3) individuals or business entities, one of which must be the president of the Association, selected and appointed by Controlling Party, each generally familiar with residential and community development design matters and knowledgeable about the Controlling Party's concern for a high level of taste and design standards within the Property. In the event of the death or resignation of any member of the ACC, the remaining members shall have full authority to designate and appoint a successor. The ACC shall function as the representative of the Owners for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The ACC shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Property. No member of the ACC shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this covenant.

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5.02. Approval of Plans and Specifications. No Improvements shall be erected, placed or altered on any Lot or any construction or on-site preparation work of any nature whatsoever begun until all plans and specifications, a plot plan and a general landscape plan have been submitted to and approved in writing by the ACC, or a majority of its members, as to:

A. quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets;

B. conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping; and

C. the other standards set forth within these Covenants (and any amendments hereto).

The ACC is authorized and empowered to consider and review any and all aspects of the construction of any Improvements, which may, in the reasonable opinion of the ACC, adversely affect the living enjoyment of one or more Owners or the general value of the Property.

5.03 Approval Procedure. Final plans and specifications shall be submitted in duplicate to the ACC for approval or disapproval. The ACC is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the ACC, one complete set of plans and specifications will be retained by the ACC and the other complete set of plans will be marked "Approved" and returned to the Owner or his designated representative. If found not to be in compliance with these Covenants, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with these Covenants. Any modification or change to the disapproved set of plans and specifications must again be submitted to the ACC for its inspection and approval. The ACC's approval or disapproval, as required herein, shall be in writing. If the ACC fails to approve or disapprove such plans and specifications within fifteen (15) days after the date of submission, then such plans shall be submitted to the Board of Directors. If the Board of Directors fails to approve or disapprove such plans and specifications within fifteen (15) days, then the approval of the ACC and Association shall be presumed.

ARTICLE VI

COMPLIANCE WITH THESE PROTECTIVE COVENANTS

6.01 Duty. The Owner of a Lot shall keep and maintain that Lot and the Improvements located thereon in a safe, clean and attractive condition and otherwise in compliance with these Covenants; provided, however, it shall be the exclusive responsibility of the Association, as described in Section 9.1, to keep and maintain the Common Areas, specifically including, but not limited to, the Landscaped Area and the Private Streets.

6.02 Failure to Comply. If, in the opinion of the Developer or the Association, any Owner is failing in the duty set forth in these Covenants, then either the Developer or the Association may give such Owner notice of such fact and such Owner shall, within ten (10) days of such notice, undertake the work required to restore said Owner's Lot to a safe, clean and attractive condition, and otherwise bring said Lot into compliance with these Covenants (including, but not limited to, the installation of landscaping). Should any such Owner fail to fulfill this duty and responsibility after such notice, then the Developer or the Association shall have the right and power (but not the obligation) to enter upon such Lot (without liability for trespass or other cause of action) and perform such work and bring such Lot into compliance with these Covenants, and the Owner of the Lot on which such work is performed by Developer or the Association, shall be liable for the cost of any such work and shall on demand pay the party or parties who performed such work such amount, together with interest thereon at the maximum rate allowed by applicable law (or, if there is no maximum rate, at eighteen percent (18%) per annum) from the date incurred by such party or parties until paid. If such Owner shall fail to so pay the Developer or the Association, as the case may be, within thirty (30) days after demand therefor, then said cost and interest thereon shall be a debt of such Owner, payable to the Developer, or the Association, as the case may be, and shall be secured by a lien against such Owner's Lot, in accordance with the provisions of Section 9.8.

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ARTICLE VII

EASEMENTS

7.01 Adoption. The Plat dedicates for use, subject to the limitations set forth therein, certain easements shown and provided for thereon, and the Plat further establishes dedications, limitations, reservations, and restrictions applicable to the Lots. Additionally, the Controlling Party may hereafter grant, create and dedicate, by recorded instruments, certain other easements and related rights affecting the Setback Areas of certain of the Lots. All dedications, limitations, restrictions and reservations shown on the Plat and all grants and dedications of easements and related rights heretofore or hereafter made by the Controlling Party affecting the Property are incorporated herein by reference and made a part of these Covenants for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Controlling Party conveying or leasing any part of the Property.

7.02 Title to Easement Estates and Appurtenances Not Conveyed. Title to any Lot conveyed by Developer shall not be held or construed, in any event, to include the title to any easement estates or any Improvements within such easements estates constructed by Developer, or its agents, through, along or upon any portion of the Property, and the right to maintain, repair, sell, or lease such Improvements to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Developer.

7.03 Association Easement. An easement is hereby granted to the Developer and the Association, their respective officers, agents, employees, and management personnel to enter upon any Lot to render any service or perform any of their respective functions. In addition, an easement is hereby granted to all police, sheriff, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service vehicles and other service vehicles, and to the operators thereof, to enter upon the Property in the performance of their duties.

7.04 Restriction. Owner shall not grant any easement on, over, under or across any Lot without the prior written approval of the Controlling Party.

7.05 Surface Areas. The surface of easement areas for underground utility services may be used for planting and maintenance of shrubbery, trees, lawns, or flowers and for driveways providing ingress and egress across such areas subject to the requirements of the grantee(s) of such easement(s) and applicable governmental regulations. However, neither the Controlling Party nor any supplier of any utility or service using any easement area shall be liable to any Owner for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance or repair of any facility in any such easement area.

ARTICLE VIII

THE ASSOCIATION

8.01 Non-Profit. The Association will be formed and organized by the Developer prior to December 31, 1995, and once formed shall be operated, as a non-profit corporation under the laws of the State of Texas.

8.02 Purposes. The purposes of the Association shall be as set forth in its Articles of Incorporation and include the collection and use of the Assessments as described in Article IX.

8.03 Board of Directors. The Association shall act through a three (3) to five (5) member Board of Directors, which shall manage the affairs of the Association. The initial Directors shall be selected by the Developer. Each initial Director shall serve on the Board of Directors until such time as the Developer has conveyed seventy-five percent (75%) or more of the Lots to Owners and until his successor is duly elected and qualified. After the expiration of the term of the initial Directors the Members (as defined in Section 8.4) shall elect a Board of Directors as provided for in the Bylaws. Any vacancy, from whatever cause, occurring in the Board of Directors shall be filled by an election of the remaining Board Members pursuant to the Bylaws. The person elected to fill any such vacancy

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shall serve for the remainder of his predecessor's term and until his successor is duly elected and qualified.

8.04 Membership. The Association shall have one class of Members. Each Owner, whether one or more persons or entities, shall, upon and by virtue of becoming such Owner, automatically become a member of the Association (hereafter referred to as "Member" individually or "Members" collectively) and shall remain a Member thereof until its ownership ceases for any reason, at which time its membership in the Association shall automatically cease. Each Owner's membership in the Association shall be appurtenant to and shall automatically follow the Owner's legal ownership in any Lot and may not be separated from such interest. Whenever the fee ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer or membership in the Association, and no certificate of membership will be issued. The Developer shall also be a Member of the Association so long as Developer is the holder of legal title to a Lot.

ARTICLE IX

COVENANTS FOR ASSESSMENTS

9.01 Maintenance Assessments. Maintenance Assessments (so called herein) shall be levied by the Board of Directors against the Members and may be used by the Association for the purposes of promoting the health, safety and welfare of the Owners, residents and tenants of the Property as the Association in its discretion may deem appropriate, including, but not limited to, the following:

- A. Maintaining, illuminating and repairing the Common Areas and any and all improvements constructed by the Controlling Party and located thereon;
- B. Planting, landscaping, sprinklering, mowing, tree surgery and general upkeep of the Landscaped Area;
- C. Provision of safety and security measures including, but not limited to, the erection, maintenance and repair of gates at the entrance and exit areas of the Property;
- D. Construction, maintaining, illuminating and repairing the Private Streets;
- E. Enforcement of parking restrictions;
- F. Erection, maintenance and repair of parking restriction signs along any roadway or street used for traffic, street signs and other Property Identification;
- G. Illumination, landscaping, maintenance, and repair of any dedicated and nondedicated boulevards, streets and roads, in or adjacent to the Property (to the extent not performed to the satisfaction of the Association by governmental authority having jurisdiction over same);
- H. Maintenance, repair and lighting along any roadway or street used for traffic;
- I. Capital items necessary to accomplish the foregoing purposes, as determined by the Association, in its sole discretion;
- J. Reimbursement for reasonable out-of-pocket expenses incurred by Developer or the Association in connection with or arising out of these Covenants; and
- K. Non-capital items or expenses as may be deemed by the Association, in its discretion and good faith, to be necessary or desirable for the carrying out of these provisions and for the general benefit of the Members.

Irrespective of anything contained herein to the contrary, in no event shall the Developer or the Association be responsible for the cost of initial planting and landscaping of Lots owned by an Owner.

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9.02 Wall Assessments. In addition to the Maintenance Assessments, Wall Assessments (so called herein) shall be levied by the Board of Directors against the Members which own Wall Lots, and may be used by the Association for the purpose of maintaining, repairing or reconstructing the Wall.

9.03 Personal Obligation of Assessments. Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Maintenance Assessments and, if applicable pursuant to Section 9.02 hereof, the Wall Assessments. "Owner", as used in this Section with respect to payment of assessments, excludes the Developer.

9.04 Basis of Maintenance Assessments. For the current fiscal year and each subsequent year, the annual Maintenance Assessment shall be established at \$200.00 per Lot. Each year or otherwise from time-to-time, the annual Maintenance Assessment may be increased as the Association deems appropriate. Furthermore, the Board of Directors may determine and certify that the then current annual Maintenance Assessment is not sufficient to meet the expenses of the Association and, at a meeting called for such purpose by majority vote of all Directors present, in person or by proxy, may vote to increase the annual Maintenance Assessment up to an amount which is consistent with other first-class residential developments then in existence in Smith County, Texas or like communities. It is expressly understood that although the Property will be developed in phases, the Maintenance Assessment shall be established on a per Lot basis.

9.05 Basis of Wall Assessments. In the case of wholesale maintenance, renovation or reconstruction of the Wall, each Member that owns a Wall Lot shall pay its proportionate share for any repair, maintenance or reconstruction of the Wall, as deemed necessary by the Association in its sole discretion. Such Member's proportionate share shall be the product of (A) a fraction with the numerator being the length that such Lot's property line abuts the Wall in linear feet and the denominator being the total length of the Wall, which fraction shall be multiplied by (B) the total cost of repair, maintenance or reconstruction. In the case of maintenance obligation with respect to a portion of the Wall, that Member that owns the Wall Lot immediately adjacent to such portion of the Wall requiring repair shall be responsible for the prompt repair, maintenance or reconstruction of such portion of the Wall in conformity with the Wall as it is initially erected. Should such responsible Member fail to timely perform such repair, maintenance or reconstruction obligations, then, and in such event, the Association may, at its sole discretion, itself undertake such repair, renovation or reconstruction obligations and assess the responsible Member for the full cost of any such repair.

9.06 Payment of Assessments -- Due Dates.

A. The Maintenance Assessments shall be due and payable in advance on a monthly, quarterly or annual basis as the Association may require. The Association is further empowered to change the timing of such required payments in its discretion.

B. The Wall Assessments shall be due and payable within thirty (30) days after receipt of an invoice therefor by the Members which own Wall Lots.

9.07 Effect of Non-Payment of Assessments -- The Personal Obligation of the Owner: The Lien: Remedies of Association. If any Assessments are not paid on the date when due and payable as specified in Section 9.06 hereof, then such Assessment shall be delinquent and shall, together with interest thereon, attorney's fees, court costs and other costs of collection thereof, becoming a continuing lien on the Lot as well as the personal obligation of the then Owner. If such Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the due date at the maximum rate permitted by applicable law or, if there is no maximum rate, at eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot. No Owner may waive or otherwise avoid liability for the Assessments provided for herein by non-use or abandonment of its Lot.

9.08 Liens to Secure Assessments -- Subordination of Lien to Mortgages. The Assessments shall each constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, which shall exist upon and against each Lot and all Improvements thereon, for the benefit of the Association and all Owners, and shall be prior and superior to all other liens, except that the same shall be subordinate and inferior to (A) all liens for taxes levied by County and State governments or

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any political subdivision or special district thereof, and (B) all liens or deeds of trust in favor of any lender and granted by Developer, and all liens, including, but not limited to, vendor's liens, deeds of trust, mortgages and other security instruments which secure any loan for any part of the purchase price of any Lot and/or cost of Improvements placed thereon, to the extent such liens described in this item (B) should be filed for record prior to the date when such Assessments become due and payable. No foreclosure shall free any Lot from the liens securing Assessments thereafter becoming due and payable, nor shall the personal obligation of the foreclosed Owner be extinguished by any foreclosure.

9.09 Association's Power to Borrow Money. The Association shall have the right, but not the obligation, to borrow money on terms acceptable to the Association, in its sole discretion, for the purpose of paying expenses incurred by the Association pursuant to Section 9.1. Any such debt shall be repaid with monies collected from the Maintenance Assessments described in Section 9.1.

9.10 Financial Statements. The Association shall, not later than one hundred twenty (120) days after the end of each fiscal year of the Association, furnish to each Member financial statements which shall include a balance sheet as of the end of such year and a statement of operations for the year then ended. Such financial statements may, but shall not be required to be, audited. All Members shall have the right during regular business hours to inspect the books and records of the Association at the office of the Association.

9.11 Limited Liability. It is understood that the judgment of the Association, its successors, legal representatives and assigns, in the allocation and expenditure of the Assessments shall be final so long as such judgment is exercised in good faith. None of the Developer, Association, the Board of Directors, or any Director, shall have any liability to any person or entity under any theory or circumstance for any error or judgment, action or inaction of the Developer, Association, the Board of Directors, or any Director. The enumeration of the services for which the assessments may be expended carries no obligation to furnish any of such services except to the extent of funds actually received by the Association.

9.12 Developer Exempted. Notwithstanding anything herein to the contrary, the Developer is specifically exempted from the payment of any assessments authorized in these Covenants.

ARTICLE X

RESERVATION OF RIGHT TO RESUBDIVIDE, FURTHER RESTRICT AND ANNEX ADDITIONAL PROPERTY

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Developer hereby reserves the right, so long as the Developer is the Controlling Party, to subdivide or resubdivide, as the case may be, plat or replat, as the case may be, and/or execute further covenants, restrictions, charges, easements and liens on all or any portion of the Property. It is acknowledged and understood that the Property may be developed in phases. Developer is specifically authorized and reserves the right to plat or replat and to undertake the development, if any, which occurs with respect to the phases of the Property and specifically with respect to the initiation of the work as to any subsequent phase. It is expressly understood and agreed that the term Property, as utilized herein, includes all phases of the proposed development.

Developer hereby further reserves the right, so long as the Developer is the Controlling Party, to annex additional adjacent property in order to develop such property and to do all things and execute all documents in order to obtain title to such adjacent property and ready same for development. Any such annexation shall have the effect of imposing these Covenants against such adjacent property.

ARTICLE XI

MISCELLANEOUS

11.01 Enforcement. These Covenants shall run with and bind the Property, and (except where expressly provided otherwise) shall inure to the benefit of and be enforceable by the

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Developer, the Association, or the Owner of any land subject to these Covenants. The Association, the Developer, or any Owner shall have the right to enforce, by proceedings at law or in equity, (A) all restrictions, covenants, conditions, reservations, liens, charges, assessments and all other provisions set out in these Covenants, and (B) unless specifically provided to the contrary therein, all restrictions, covenants, conditions, reservations, liens, charges, assessments and other provisions set out in any deed, ground lease or other instrument executed by Developer further restricting, as herein authorized, the use or development of the Property or any portion thereof; provided, however, that the failure of the Association, the Developer, or any Owner to take any action upon a breach of these Covenants shall not render such party liable in any manner for such failure. Failure of the Association, the Developer, or any Owner to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of the right to take enforcement action upon any subsequent breach or default.

11.02 Termination of Covenants. These Covenants shall be effective upon the date of recordation hereof, and as amended from time to time, shall continue in full force and effect to and including December 31, 2020. From and after said date, these Covenants, as amended, shall be automatically extended for successive periods of ten (10) years, unless the Owners of eighty percent (80%) of the Lots within the Property, by written declaration signed, acknowledged and filed for record, elect to terminate these Covenants. Notwithstanding the foregoing, the Developer may, so long as the Developer is the Controlling Party, alter, amend, terminate or extend these Covenants. Thereafter, the Owners may alter, amend, terminate or extend these Covenants, and this right shall exist as long as the then Owners of eighty percent (80%) of the Lots within the Property desire; provided, however, that no amendment of the Permitted Uses in Section 2.1 shall have a retroactive application to any Improvements theretofore constructed or for which construction has commenced.

11.03 Assignability of Developer's Rights. Developer reserves the right to assign or delegate all or any part of its rights or obligations hereunder to the Association. Upon any such written assignment or delegation, Developer shall be relieved of the rights and obligations so assigned or delegated. In the event that Developer no longer owns nor has ground leased any portion of the Property, all rights and obligations of Developer hereunder shall automatically be transferred to and assumed by the Association, and Developer shall automatically be relieved of same, without need of any written assignment or delegation.

11.04 Operation of Entrance Gates. The Developer has the right to allow free and open access through the entrance gates during daylight hours for the purposes of sales, construction, and/or maintenance.

11.05 Protection of Name. No Owner, or any tenant or mortgagee of any Owner shall use the phrase "Forest Glen" or any phrase or phrases similar thereto in connection with any Lot or any business operated in connection with any Lot, without the prior written consent of Developer except that Owner may use such phrase to identify the location of such Lot and Owner's contemplated development thereof. This restriction is for the benefit of and may be enforced only by Developer. Nothing contained herein shall be construed to restrict Developer's use of the words described in this Section 11.05 and further, Developer specifically reserves the right to use such phrase.

11.06 Utility District. Notwithstanding anything herein to the contrary, any land within the Property conveyed by the Developer to a municipal utility district or other public authority to provide utility service to the Property shall not be subject to these Covenants (including, without limitation, the provisions hereof pertaining to the assessments so long as such land is owned by such utility district or other public authority for the provisions of utilities to the Property).

11.07 Corrections. The Developer shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party, to amend these Covenants by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical errors or any ambiguity or inconsistency appearing herein.

11.08 Interpretation. If these Covenants or any word, clause, sentence, paragraph, or other part thereof shall be susceptible of contradicting interpretations, the interpretation which is most nearly in accordance with the general purposes and objectives of these Covenants shall govern.

11.09 Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in these

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Covenants is omitted herefrom, such omission is unintentional and the omitted punctuation, word, clause, sentence or provisions shall be supplied by inference.

11.10 Notices. All notices or other communications required or permitted to be given pursuant hereto shall be in writing and shall be considered as properly given if (A) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (B) by delivering same in person to the intended addressee, (C) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (D) by prepaid telegram, telex, or telefacsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the address of any Owner shall be the last known address of such Owner as shown on the records of the Controlling Party at the time of such mailing and the addresses of Developer, the Association and the ACC shall be shown in Article I hereof; provided, however, that (A) any Owner shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the Controlling Party in the manner set forth herein; and (B) any of the Developer, the Association and the ACC shall have the right to change their respective addresses for notice hereunder to any other location within Smith County, Texas by the giving of thirty (30) days' notice to the Owners in the manner set forth herein.

11.11 Rules of Construction. The singular, wherever used herein, shall be construed to include the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships or individuals, males or females, shall in all cases be assumed as though in each case fully expressed. The word "or" is not exclusive. The words "herein", "hereinafter", "hereafter", "hereunder" and "hereof" refer to these Covenants as a whole and not merely to the sections in which such words appear, unless the context otherwise requires.

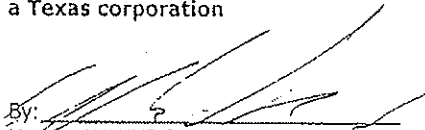
11.12 Severability. The invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in these Covenants, or any part thereof, shall not affect any of the other covenants, restrictions, conditions or provisions hereof, which shall remain in full force and effect.

11.12 Headings. All headings contained herein are for convenience only, and shall not be deemed to modify any substantive provision hereof.

11.13 Writing Required. In the event the approval or consent of the Developer, Association, Controlling Party or Board of Directors is required under these Covenants, such approval or consents must be obtained in writing to be effective unless expressly provided to the contrary herein.

Executed this _____ day of _____, 1999.

TYLER VENTURES, INC.,
a Texas corporation

By: 
Name: WAYNE SHAY
Title: President

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**1BYLAWS
OF
FSG PHASE III HOMEOWNER'S ASSOCIATION, INC.**

These Bylaws (the "Bylaws") govern the affairs of FSG Phase III Homeowner's Association, Inc., a non-profit corporation (the "Association") organized under the Texas Nonprofit Corporation Act (the "Act").

**Article 1
Registered Office and Registered Agent**

The Corporation shall comply with the requirements of the Act and maintain a registered office and registered agent in Texas. The Board of Directors may change the registered office and the registered agent as provided by the Act.

**Article 2
Definitions**

2.01 Association. "Association" shall mean and refer to FSG Phase III Homeowner's Association, Inc., its successors and assigns.

2.02 Properties. "Properties" shall mean and refer to that certain real property described in the Declaration of Protective Covenants, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

2.03 Common Area. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

2.04 Lot. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

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

2.06 Declaration. "Declaration" shall mean and refer to the Declaration of Protective Covenants applicable to the Properties recorded in Volume 3692, Page 862; Amendment recorded in Volume 3710, Page 884, of the Land Records of Smith County, Texas; Amendment recorded in Volume 3836, Page 813, of the Land Records of Smith County, Texas; and Declaration of Protective Covenants recorded in Volume 4017, Page 136 of the Land Records of Smith County, Texas.

2.07 Member. "Member" shall mean and refer to those persons entitled to membership as provided In the Declaration.

Article 3 **Meeting of Members**

3.01 Annual Meeting. The regular annual meetings of the Members shall be held during January, February or March of each year, at a time to be designated by the Board of Directors. At the annual meeting, Members shall elect Directors and transact any other business that may come before the meeting.

3.02 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members having not less than 10% percent of all of the votes of the Class A membership.

3.03 Notice of Meetings. Written or printed notice of any meeting of Members, including the annual meeting, shall be delivered to each Member entitled to vote at the meeting not less than 10 nor more than 50 days before the date of the meeting. The notice shall state the place, day, and time of the meeting, who called the meeting, and the general purpose or purposes for which the meeting is called. Notice shall be given by or at the direction of the President or Secretary of the Association, or the officers or persons calling the meeting. If all of the Members meet and consent to the holding of a meeting, any corporate action may be taken at the meeting regardless of a lack of proper notice.

3.04 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, 10% of the votes of each class of membership shall constitute a quorum for any action of the Members. The vote of the majority of the votes entitled to be cast by the Members present, or represented by proxy at a meeting at which a quorum is present, shall be the act of the Members meeting.

3.05 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

3.06 Voting of Members. The Members or their proxies may cast, on each matter submitted to a vote at a meeting of Members, as many votes as they are entitled to exercise under the provisions of the Declaration. Cumulative voting is not permitted.

3.07 Action Without Meeting. Action may be taken by the Members of the Association without a meeting if each Member entitled to vote signs a written consent to the action and such consents are filed with the Secretary of the Association.

Article 4
Board of Directors

4.01 Management of Association. The affairs of the Association shall be managed by the Board of Directors.

4.02 Number. The number of Directors of the Association shall be not less than 3 or more than 5. Each Director shall be a member of a separate household within the Association. The number of Directors may be increased or decreased from time to time by action of the Board, but no decrease shall have the effect of shortening the term of any incumbent Director.

4.03 Term of Office. The Directors constituting the initial Board of Directors shall be those named in the Articles of Incorporation, and shall hold office until the first annual election of Directors. Thereafter, the Directors shall be elected annually by the Members entitled to vote, and shall hold office until the next annual election of Directors and until their successors shall have been elected or appointed and qualified. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting or at a special meeting of Members called for that purpose.

4.04 Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Article 5
Meetings of Directors

5.01 Annual Meeting. The annual meeting of the Board of Directors may be held without notice other than these Bylaws. The annual meeting of the Board of Directors shall be held immediately after, and at the same place as, the annual meeting of Members.

5.02 Regular Meetings. Regular meetings of the Board of Directors shall be held on such dates and at such place as may be fixed from time to time by resolution of the Board. In the event the day fixed for a regular meeting shall fall upon a legal holiday, then the meeting shall be held at the same time on the next day which is not a legal holiday.

5.03 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors. Written, printed notice or e-mail of any special meeting of the Board of Directors shall be delivered to each Director no less than 7 nor more than 30 days before the date of the meeting. The

notice shall state the place, day, and time of the meeting, who called the meeting, and the purpose or purposes for which the meeting is called.

5.04 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

5.05 Proxies. A Director may vote in person or by proxy executed in writing by the Director. No proxy shall be valid after 3 months from the date of its execution.

5.06 Board Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, and with the same force and effect as a unanimous vote of Directors, if all Directors shall individually or collectively consent in writing to the action.

5.07 Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his duties.

5.08 Powers. The Board of Directors shall have power to:

- (a) Adopt and publish rules and regulations governing the use, preservation and maintenance of the Common Area;
- (b) Adopt and publish rules and regulations governing the preservation and maintenance of the yard exposed from the street of each Lot on which a residence has been constructed as provided in the Declaration;
- (c) Establish and enforce rules, procedures, and regulations governing the use, maintenance, and appearance of the Properties for the benefit of the Owners, as provided in the Declaration;
- (d) Employ a manager, an independent contractor, or such other employees as the Board deem necessary, and to prescribe their duties; and
- (e) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration.

5.09 Duties. It shall be the duty of the Board of Directors to:

- (a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by a majority of the Members who are entitled to vote;

- (b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;
- (c) As more fully provided In the Declaration, to fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment; send written notice of each assessment to every Owner subject thereto at least 30 days in advance of each semi-annual assessment period; and foreclose the lien against any property for which assessments are not paid within 30 days after due date or to bring an action at law against the Owner personally obligated to pay the same;
- (d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid.
- (e) Procure and maintain adequate liability and hazard insurance on Property owned by the Association.

Article 6 **Officers**

6.01 Positions. The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. The Board of Directors may create additional officer positions, define the authority and duties of each such position, and elect or appoint persons to fill the positions. Any two or more offices may be held by the same person, except the offices of President and Secretary.

6.02 Election of Officers. The election of officers shall take place at the annual meeting of the Board of Directors following the annual meeting of the Members of the Association.

6.03 Term. The officers of the Association shall be elected annually by the Board and each shall hold office for 1 year unless he shall sooner resign or shall be removed, or otherwise disqualified to serve.

6.04 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such registration shall not be necessary to make it effective.

6.05 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

6.06 Duties. The duties of the officers are as follows:

- (a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and, if required by action of the Board, shall co-sign all checks and promissory notes.
- (b) The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
- (c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.
- (d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy to each of the Members.

Article 7

Transactions of the Association

7.01 Contracts. The Board of Directors may authorize any officer or agent of the Association to enter into a contract or execute and deliver any instrument in the name of and on behalf of the Association. This authority may be limited to a specific contract or instrument or it may extend to any number and type of possible contracts and instruments.

7.02 Deposits. All funds of the Association shall be deposited to the credit of the Association in banks, trust companies, or other depositories that the Board of Directors selects.

7.03 Gifts. The Board of Directors may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Association. The Board of Directors may make gifts and give charitable contributions that are not prohibited by the Bylaws, the Articles of Incorporation, state law, and any requirements for maintaining the Corporation's federal and state tax status.

Article 8
Books and Records

8.01 Required Books and Records. The Association shall keep correct and complete books and records of account. The Association's books and records shall include:

- (a) A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Association, including, but not limited to, the Articles of Incorporation, and any Articles of Amendment, Restated Articles, Articles of Merger, Articles of Consolidation, and Statement of Change of Registered Office or Registered Agent.
- (b) A copy of the Bylaws, and any amended versions or amendments to the Bylaws.
- (c) Minutes of the proceedings of Members and of the Board of Directors.
- (d) A list of the names and addresses of the Members, Directors, and Officers of the Association.
- (e) A financial statement showing the assets, liabilities, and net worth of the Association at the end of the most recent fiscal year.
- (f) A financial statement showing the income and expenses of the Association for the most recent fiscal year.
- (g) All rulings, letters, and other documents relating to the Association's federal, state, and local tax status.
- (h) The Association's federal, state, and local information or income tax returns for the Association's most recent tax year.

8.02 Inspection and Copying. Any Member, Director, or Officer of the Association may inspect and receive copies of all books and records of the Association, at any reasonable time, upon written request therefore made by the Member, Director, or Officer, or his or her attorney or other duly authorized representative.

8.03 Audit. Any Member shall have the right to have an audit conducted of the Association's books. The expense of the audit shall be borne by the Member requesting such Audit, unless payment of audit expenses is authorized by the Board of Directors.

8.04 Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January and end on the last day in December of each year.

Article 9
Assessments

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the due date of delinquency at the rate of 10% percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against die Property, and interest, cost, and reasonable attorney's fees of any such action shall he added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Article 10 **Notices**

10.01 Mail or Personal Delivery. Any notice required or permitted by the Bylaws to be given to a Member, Director, or Officer of the Association may be given by mail, e-mail or by personal delivery. If mailed, a notice shall be deemed to be delivered when deposited in the United States Mail addressed to the person at his or her address as it appears on the records of the Association, with postage prepaid. A Member may change his or her address by giving written notice to the Secretary of the Association.

10.02 Signed Waiver of Notice. Whenever any notice is required to be given under the provisions of the Act or under the provisions of the Articles of Incorporation or the Bylaws, a waiver in writing signed by the person entitled to receive notice shall be deemed equivalent to the giving of the notice. A waiver of notice shall be effective whether signed before or after the time stated in the notice being waived.

10.03 Waiver of Notice By Attendance. The attendance of a person at a meeting shall constitute a waiver of notice of such meeting unless the person attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Article 11 **Special Procedures For Meetings**

11.01 Meeting By Telephone. The Members and Board of Directors of the Association may hold a meeting by telephone conference call procedures in which all persons participating in the meeting can hear each other. The notice of a meeting by telephone conference must state the fact that the meeting will be held by telephone as well as all other matters required to be included in the notice. Participation of a person in a conference call meeting constitutes presence of that person at the meeting.

11 .02 Decision Without Meeting. Any decision required or permitted to be made at a meeting of the Members or Board of Directors may be made without a meeting if a

written consent to the decision is signed by all of the persons to vote on the matter. The original signed consents shall be maintained in the Association's records.

11.03 Voting By Proxy. A person who is authorized to exercise a proxy may not exercise the proxy unless the proxy is delivered to the officer presiding at the meeting before the business of the meeting begins. The Secretary or other person taking the minutes of the meeting shall record in the minutes the name of the person who executed the proxy and the name of the person authorized to exercise the proxy. If a person who has duly executed a proxy personally attends a meeting, the proxy shall not be effective for that meeting. A proxy filed with the Secretary or other designated officer shall remain in force and effect until the first of the following occurs:

- (a) An instrument revoking the proxy is delivered to the Secretary or other designated officer;
- (b) The proxy authority expires under the terms of the proxy; or
- (c) The proxy authority expires under the terms of the Bylaws.

Article 12 **Amendments To Bylaws**

12.01 The Bylaws may be amended, altered, or repealed, and new Bylaws may be adopted by a majority of the members at any regular or special meeting, notice of which meeting has been given in accordance with these Bylaws. The notice of any meeting at which the Bylaws are altered, amended, or repealed, or at which new Bylaws are adopted shall include the text or summary of the proposed Bylaw provisions.

12.02 In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

Certification

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of FSG Phase III Homeowner's Association, Inc., a Texas nonprofit corporation; and that the foregoing Bylaws constitute the original Bylaws of said Association as duly adopted by the unanimous consent of the Directors of the Corporation.

In witness whereof, I have hereunto subscribed my name this 25th day of October, 2005.