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SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
TIMBERGATE SECTION 1
A RESIDENTIAL NEIGHBORHOOD

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**SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR TIMBERGATE HOMEOWNERS' ASSOCIATION, INC.
SECTION I,
A RESIDENTIAL NEIGHBORHOOD**

THIS DECLARATION, made as of the date hereinafter set forth by Timbergate Joint Venture, a Texas corporation (hereinafter referred to as "Declarant") ;

WITNESSETH:

WHEREAS, Declarant is the owner of the property described in Exhibit "A" attached hereto; and

WHEREAS, it is the desire of Declarant to provide for the preservation of the values and amenities in such property and, to this end to subject the Lots (described by recorded Plat File No. 371008 of the Harris County Map Records) as a residential subdivision to be developed within the jurisdiction of the Timbergate Homeowners' Association, Inc. (hereinafter referred to as the "Residential Association") and to the additional covenants, conditions and restrictions hereinafter set forth for the benefit of the residential lots and all present and future owners thereof; and

WHEREAS, the Lots are a portion of the Aggregate Property which is subject to the jurisdiction of the Clayton Park Property Owners' Association, Inc., a Texas non-profit corporation (hereinafter referred to as the "Commercial Association") as originally defined under the Clayton Park Declaration of Covenants, Conditions and Restrictions recorded under Harris County Clerk's File No. J413913, and subject further to the Amendment recorded under Harris County Clerk's File No. P486156, and the Articles of Annexation recorded under Harris County Clerk's File No. K494136 and the Second Amendment recorded under Harris County Clerk's File No. R429305; organized and empowered by the Commercial Declaration to collect assessments and to provide, among other things, maintenance of certain esplanades, landscape terms and buffers within the Aggregate Property and other services benefiting such property; and

WHEREAS, Declarant wishes to provide an efficient arrangement whereby the services provided to the Aggregate Property by the Commercial Association will be provided to the Residential Association without a duplication of effort or unnecessary costs.

NOW, THEREFORE, Declarant hereby declares that the Lots in the property described in recorded Plat File Number 371008 shall be held, sold and conveyed subject to the following easements, additional restrictions, covenants and conditions, which shall run with said Lots and shall be binding upon all parties having any right, title or interest in said Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

SECTION 1. "AGGREGATE PROPERTY" shall mean and refer to that certain tract(s) of land governed by those documents filed under Harris County Clerk's File No. J413913, P486156, K494136, and any other applicable references or properties which may be provided for in the Commercial Declaration and/or any future REPLAT or amendments thereto.

SECTION 2. "ARCHITECTURAL CONTROL COMMITTEE" or "ACC" shall mean and refer to that certain Committee created pursuant to Article VI of the Residential Declaration. The ACC is created for the purpose of review of all residential construction and/or improvements to be located on any residential lot in advance of any construction. Review of the ARC (hereinafter defined) shall be in addition to the review of the ACC and the conclusion of the ARC shall be superior and final over any review process.

SECTION 3. "ARCHITECTURAL REVIEW COMMITTEE" or "ARC" shall refer to that Committee created and authorized pursuant to Article V of the Clayton Park Declaration of Covenants, Conditions and Restrictions, which provides for the review and approval of all plans for any construction and/or improvement to the Aggregate Property in advance of any construction.

SECTION 4. "ASSOCIATIONS" shall refer to both the Commercial Association and the Residential Association.

SECTION 5. "BUILDER" shall mean and refer to any person or entity undertaking the construction of a residence on a Lot.

SECTION 6. "COMMERCIAL ASSOCIATION" shall mean and refer to The Clayton Park Property Owners' Association, Inc., a Texas non-profit corporation, its successors and assigns.

SECTION 7. "COMMERCIAL BOARD" shall mean the Board of Directors of the Clayton Park Property Owners' Association, Inc.

SECTION 8. "COMMERCIAL DECLARATION" shall mean and refer to that certain Declaration of Covenants, Conditions, and Restrictions imposed on the Aggregate Property as described in and filed under Harris County Clerk's File Nos. J413913, P486156, and K494136 recorded in the Official Public Records of Real Property of Harris County, Texas.

SECTION 9. "COMMON AREA" shall mean and refer to any properties, real or personal, owned by the Residential Association for the common use and enjoyment of the Members of the Residential Association.

SECTION 10. "COMMUNITY WIDE STANDARD" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties, which may be more specifically determined by the Board of Directors, the Architectural Review Committee, and the Architectural Control Committee.

SECTION 11. "CORNER LOT" shall mean and refer to a Lot which abuts on more than one Street.

SECTION 12. "DECLARANT" shall mean and refer to The Timbergate Joint Venture of Texas, Inc., a Texas corporation, its successors and assigns.

SECTION 13. "DWELLING UNIT" shall mean a residential building designed for, and limited and restricted to, occupancy by a single family on a Lot, not including an accessory building or garage. A mobile home is not a Dwelling Unit.

SECTION 14. "IMPROVEMENT" shall mean all structures and any appurtenances thereto of every type or kind, which are visible on a Lot, including, but not limited to: a Dwelling Unit, buildings, outbuildings, swimming pools, spas, hot tubs, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, sidewalks, walkways, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening, walls, retaining walls, stairs, decks, fixtures, windbreaks, poles, signs, exterior tanks, exterior air conditioning fixtures and equipment, water softener fixtures,

exterior lighting, recreational equipment or facilities, radio, conventional or cable or television antenna or dish, microwave television antenna, and landscaping that is placed on and/or visible from any Lot.

SECTION 15. "IMPROVEMENT TO PROPERTY" includes, without limitation: (a) the construction, installation or erection of any building, structure, fence, Dwelling Unit or other Improvement, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure, fence, or other Improvements; (c) the grading, excavation, filling, or similar disturbance to the surface of any Lot, including, without limitation, change of grade, change of ground level, change of drainage pattern, or change of stream bed; (d) installation or changes to the landscaping on any Lot; and (e) any exterior modification, expansion, change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture not expressly permitted by this Declaration, Architectural Guidelines, or Rules and Regulations.

SECTION 16. "LOT" shall mean and refer to any of the numbered lots shown on the Subdivision Plat(s) and/or any future replat of the Subdivision Plat(s) recorded under File No. R200251, intended for the construction of a residence, excluding all reserve tracts shown on the Subdivision Plat(s), but including Lots hereafter created by a replat or any addition of land thereto.

SECTION 17. "MEMBER" shall refer to every person or entity which holds a membership in the Residential Association.

SECTION 18. "NEIGHBORHOOD" shall mean and refer to each separately designated and denominated residential area within the Properties, comprised of one or more types of housing and other permitted uses, whether or not governed by an additional property owners' association. The Declarant or other Owner of such Property shall designate in a Supplemental Declaration that such Property may constitute a separate neighborhood. All property subject to this Declaration which is not included within a designated Neighborhood shall be considered part of the Neighborhood. The Declarant or Residential Board may grant separate Neighborhood status to any area upon written request by the Owners representing a majority of the total votes within the proposed Neighborhood.

SECTION 19. "NEIGHBORHOOD ASSESSMENTS" shall mean assessments levied by the Residential Board for payment of Neighborhood Expenses. Such Neighborhood Assessments shall be determined and adopted by the Residential Board and this fee shall be in addition to such fee(s) as defined by the Commercial Association and any other Residential Association assessments.

SECTION 20. "NEIGHBORHOOD EXPENSES" shall mean and include the actual and estimated expenses incurred by the Residential Association for the benefit of the Owner(s) of a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements.

SECTION 21. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation or those owning an easement right, a mineral interest, or a royalty interest.

SECTION 23. "PROPERTIES" shall mean and refer to the Lot or Lots of real property described in the Subdivision Plat recorded under File No. 371008, and any additional property that may be hereafter added to the jurisdiction of the Residential Association as provided herein.

SECTION 24. "RESIDENTIAL ASSOCIATION" shall mean and refer to the Timbergate Homeowners' Association, Inc., which shall be governed by a separate Board of Directors, and shall have a Designated Representative (appointed by the Board) to communicate and vote on behalf of all Owners within the Residential Association regarding matters of the Clayton Park Property Owners' Association, Inc.

SECTION 25. "RESIDENTIAL BOARD" shall mean and refer to the Board of Directors of the Timbergate Homeowners Association, Inc.

SECTION 26. "STREET" shall mean and refer to any street, drive, boulevard, road, alley, lane, avenue, or thoroughfare as shown on the residential Subdivision Plat(s).

SECTION 27. "SUBDIVISION PLATS" shall mean and refer to the recorded maps, plats or any REPLAT of a portion of the Properties recorded and filed in the Map Records of Harris County, Texas.

SECTION 28. "SUPPLEMENTAL DECLARATION" shall refer to (i) an amendment to this Declaration subjecting additional property to this Declaration and (ii) to an instrument hereafter executed by the Declarant or other Owner or Owners of the affected property which designates a Neighborhood or imposes additional restrictions on all or part of the Properties, which additional restrictions shall be enforced by the Residential Association. Unless and until this property is removed from the jurisdiction of Clayton Park Property Owners' Association, Inc., it shall also be subject to the jurisdiction and enforcement of the Clayton Park Property Owners' Association, Inc..

ARTICLE II

COORDINATION BETWEEN THE COMMERCIAL ASSOCIATION AND THE RESIDENTIAL ASSOCIATION

SECTION 1. JURISDICTION. The Lots are subject to the jurisdiction of the Commercial Association and assessments will be levied by the Residential Association and Commercial Association pursuant to the provisions of this Declaration and the Commercial Declaration, respectively, unless and until the Properties described on Exhibit "A" and/or any amendment hereto shall be removed from the jurisdiction of Commercial Association at which time the Residential Association will govern or the Residential Association may merge with a like entity.

SECTION 2. CONTRACTUAL DIVISION OF AUTHORITY. Each Association will perform its respective functions as set forth in its organizational documents and the applicable Declaration. However, in order to alleviate a duplication of operations and to minimize administrative costs, the Residential Association and the Commercial Association retain the right (but not the obligation) to enter into a contract that provides, inter alia, the Commercial Association shall maintain the esplanades and side setbacks along all boulevard streets within the Properties, pay the costs of street lights, both existing fixtures and those to be constructed within the Properties, and maintain all detention pond areas within the Aggregate Property, while the Residential Association will maintain all cul-de-sac islands and landscape/recreation reserves within the Properties and will operate and maintain the Common Area within the Properties.

ARTICLE III

ORGANIZATION AND VOTING RIGHTS

SECTION 1. ORGANIZATION. Declarant has caused the Residential Association to be organized and the properties to be formed as a Neighborhood pursuant to this Supplemental Declaration. The principal purposes of the Residential Association are the collection, expenditure, and management of the maintenance funds, enforcement of the restrictions contained herein, providing for the maintenance, preservation and architectural control of the Lots, and the general overall supervision of all of the affairs of and the promotion of the health, safety, and welfare of the residents within the Properties which shall be administered under the overall jurisdiction of the Commercial Association.

SECTION 2. BOARD OF DIRECTORS. The Residential Association shall act through a Residential Board comprised of not less than three (3) Directors, which shall represent and communicate the affairs of the Residential Association, as specified in the By-Laws of the Residential Association. The number of Directors may be changed by amendment of the By-Laws of the Residential Association, however the number shall never be less than three (3). The initial term and election of Directors shall be as defined in the Articles of Incorporation or Bylaws.-

SECTION 3. MEMBERSHIP. Every Owner within the Residential Association shall be a member. Membership shall be appurtenant to and may not be separated from ownership of any property which is subject to Neighborhood and other Assessments imposed by the Residential Association and/or Commercial Association, as applicable.

SECTION 4. VOTING. The Residential Association shall initially have two classes of voting membership:

- (a) CLASS A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all of such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. No cumulative voting shall be permitted.

- (b) CLASS B. Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned.

The Class B membership shall cease and be converted to Class A membership on the occurrence the earlier of the following events: (i) when the total votes in the Class A membership equal the total votes in the Class B membership, or (ii) on December 31, 2001, whichever is later, or (iii) as may be otherwise defined in writing by Declarant.

However, at such time that additional property is annexed into the Residential Association, the Class B membership of the Declarant, shall, if it has previously ceased due to one of the conditions listed above in (i), (ii), or (iii), be reinstated and shall apply to all Lots owned by Declarant in the newly annexed portion of the Properties as well as to all Lots owned by Declarant in all other areas of the Properties. Such reinstatement is subject to further cessation (and subsequent reinstatement at the time of subsequent annexations to the Properties) in accordance with the limitations set forth in the preceding paragraphs (i), (ii), or (iii) of this Section, whichever occurs first. However, upon reinstatement of Declarant's Class B membership and voting rights due to annexation of additional property, the date in Section 4 of this Article shall be redefined (to the extent necessary) such that it is in no event less than ten (10) years from the date of the recorded annexation, unless otherwise defined by a recorded document.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.

The Declarant, for each Lot within the Properties, hereby covenants and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be expressed in the deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Associations the following:

- (a) annual assessments or charges;
- (b) special assessments for capital improvements; and
- (c) Neighborhood Assessments, or Reimbursement Assessments, if applicable;

such assessments or charges to be fixed, established and collected as hereinafter provided. These assessments and charges, together with interest thereon as hereinafter provided, costs of collection, and reasonable attorney's fees, shall be a charge on the land and shall be secured by a continuing lien upon the property against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs of collection, and reasonable attorney's fees shall also be and remain the personal obligation of the Owner of the particular Lot at the time the assessment or charge fell due, notwithstanding any subsequent transfer of title of such property. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them. However, successors in title shall nonetheless acquire title to the land subject to the lien securing the assessments and charges.

SECTION 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Associations shall be used for the purpose of promoting the recreation and welfare of the residents in the Properties, including but not limited to, maintenance of cul-de-sac islands, Street esplanades and rights-of-way, and landscape/recreation reserves within the Properties, and operation and maintenance of the Common Area and may include the maintenance of all turf area exclusive of plant bed areas in the front yard of each residence and/or within alley easements. Without limiting the foregoing, the total assessments collected by the Residential Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Residential Association, payments to the Commercial Association pursuant to any contractual agreements with the Residential Association, and, at the option (without obligation) of the Residential Board, for any and all of the following purposes: fighting, improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, easements, and esplanades in the Properties; collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration; employing policemen or watchmen and/or a patrol service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees, grass and shrubbery in esplanades, easements, and in the Common Area; acquiring and/or constructing or maintaining any amenities or recreational facilities that are or will

be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Residential Board to keep and maintain the lands within the Properties in neat and good order, or which they consider of general benefit to the owners or occupants of the Properties, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. The judgment of the Residential Board in establishing annual assessments, special assessments and other charges, and in the expenditure of said funds, shall be final and conclusive so long as said judgment is exercised in good faith.

Neighborhood Assessments shall be levied equally against all of the Lots in a particular Neighborhood where the Residential Board has determined that certain expenses of the Residential Association benefit only that Neighborhood. Upon written request by the owners representing a majority of the total votes within a Neighborhood, the Residential Board shall initiate a service benefiting only that particular Neighborhood which shall be paid for by a Neighborhood Assessment, or the Residential Board may discontinue a service previously provided to a Neighborhood, as may be agreed upon by the members of such Neighborhood. Such expenses benefiting only a particular Neighborhood may include, without limitation, expenses incurred for maintenance and repair of the following items and provision of the following services within a particular Neighborhood: private streets, trash and back door garbage pick-up service as opposed to curb side service, lighting, mailboxes, operation and maintenance of landscaping, fountains and signage within the particular Neighborhood, entry gates, perimeter fencing, recreational equipment.

SECTION 3. MAXIMUM LEVEL OF ANNUAL ASSESSMENTS. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner by Declarant, the maximum annual assessment shall be \$800 per Lot. Each year thereafter the maximum annual assessment may be increased by the Residential Board, at its sole discretion and without a vote of the Members of the Residential Association, by an amount not to exceed a twenty percent (20%) increase over the maximum assessment for the previous year. The maximum annual assessment may be increased above twenty percent (20%) by a vote of two-thirds (2/3rds) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose. After consideration of current maintenance costs and future needs of the Residential Association, the Residential Board may fix the

annual assessment at any amount not in excess of the maximum. Annual assessments may be collected on a monthly basis at the Residential Board's election. Neighborhood Assessments shall be subject to the same formula; however, members within a Neighborhood may agree to increase or decrease Neighborhood services by a vote of fifty-one percent (51%).

SECTION 4. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS. In addition to the annual assessment and Neighborhood Assessments authorized above, the Residential Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the total eligible votes of Members who are voting in person or by proxy at a meeting duly called for such purpose. At the Residential Board's election, special assessments may be collected on a monthly basis.

SECTION 5. NOTICE AND QUORUM. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 above shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meetings. No subsequent meeting shall be held more than 60 days following the preceding meeting.

SECTION 6. RATES OF ASSESSMENT. Annual assessments, special assessments, and Neighborhood Assessments on all assessable Lots, shall be fixed at a uniform rate. Those Lots that are owned by a Builder and that are not occupied as residences shall be assessed based upon the following formula: Lots owned by a Builder shall be assessed at a rate equal to one hundred percent of the annual assessment as established by the Residential Board. The Declarant shall elect to pay one-half the rate established for each Lot owned or pay the annual operating deficit, if any, determined by the approved operating budget adopted for the subsequent calendar year. Annually, the Declarant shall notify the Residential Association in writing and present their selected method of calculation for