

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR THE LOTS IN VALLEY OAKS**

THE STATE OF TEXAS S
 S KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DENTON S 078149

WHEREAS, INTERVEST-VALLEY OAKS, LTD., a Texas limited Partnership ("Declarant"), is the owner of (i) certain real property platted as Valley Oaks Addition Phase I ("Phase I"), being approximately 10.369 acres of land out of the Jesse Watkins Survey - Abstract No. 1328, City of Lewisville (the "City"), Denton County, Texas, according to the plat thereof recorded on July 25, 1995 in Cabinet L, Page 203 of the Map Records of Denton County (the "County"), Texas, said plat being referred to as the "Phase I Plat" and (ii) certain real property platted as Valley Oaks Addition Phase II ("Phase II"), being approximately 14.829 acres of land out of the Jesse Watkins Survey - Abstract No. 1328, City of Lewisville, Denton County, Texas, according to the plat thereof recorded on July 31, 1995 in Cabinet L, Pages 217 - 218 of the Map Records of Denton County, Texas, said plat being referred to as the "Phase II Plat" (Phase I and Phase II being hereinafter collectively referred to as the "Property" and the Phase I Plat and the Phase II Plat being hereinafter collectively referred to as the "Plat").

Declarant has subdivided the Property into single-family lots as shown on the Plat. As used herein, "Lot" and "Lots" shall refer to any numbered plots or tracts shown on the Plat and shall not refer to public areas, parks, esplanades, or tracts owned or subsequently acquired by any public body, or any plot or tract shown as reserve whether designed as unrestricted or not.

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of establishing a general scheme for the development of all the Lots in the Property and for the purpose of enhancing and protecting the value, attractiveness and desirability of said Lots and which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property, the Lots or any part thereof, and which shall inure to the benefit of each Owner thereof.

ARTICLE I

GENERAL

Section 1.1 - Definition. The following words, when used in this Declaration, unless the context shall prohibit, shall have the following meanings:

- a. "Association" shall mean and refer to the Property Owner's Association, if any, established in the manner

set forth in Section 2.1 hereof by the Declarant or the Owners of the Lots.

- b. "Common Maintenance Areas" shall mean and refer to the Common Properties or Common Areas, if any, the Restricted Area, and the entrance monuments and landscape areas, drainage facilities, detention ponds, right-of-way landscaping and such other areas lying therein or within dedicated public easements or rights-of-way as deemed appropriate by the Declarant or the Association for the preservation, protection and enhancement of the property values and the general health, safety or welfare of the Owners.
- c. "Common Properties" or "Common Areas" shall mean and refer to those areas of land, if any, designated by Declarant or shown on the Plat or its equivalent of the Property or any portion thereof filed or approved by Declarant and identified thereon as "Common Properties" or "Common Areas".
- d. "Declarant" shall mean and refer to Intervest-Valley Oaks, Ltd. And its successor and assigns and shall include any person or entity to which Declarant may assign its rights and privileges, duties, and obligations hereunder, which are and shall be assignable.
- e. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for the Lots in Valley Oaks, and any amendments, annexations and supplements hereto made in accordance with the terms hereof.
- f. "Property" shall mean and refer to the real property (including all improvements situated thereon) described on Exhibit A attached hereto, and additions thereto as are subject to this Declaration or any supplemental declaration.
- g. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those persons or entities having an interest in any Lot merely as security for the performance of an obligation.
- h. "Restricted Area" shall mean and refer to the portion of the Lots subject to any specified use as provided in Section 5.11 hereof.

Section 1.2 Property Subject to Declaration. All of the Property and any right, title or interest therein shall be owned, held, leased, sold and/or conveyed by Declarant, and any

subsequent Owner of all or any part thereof, subject to this Declaration and the covenants, restrictions, charges and liens set forth herein the following manner:

- a. If Declarant or any other person, firm or corporation is the owner of any property which is desire to add to the scheme of this Declaration, it may do so by filling of record a Supplementary Declaration (herein so called), which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such property, PROVIDED HOWEVER, that such covenants, conditions and restrictions as applied to that property which is so added may be altered or modified by said Supplementary Declaration, and PROVIDED FURTHER, if property is added to the scheme of this Declaration by any person, firm or corporation other than Declarant, the Association, acting through its Board of Directors (the "Board" or the "Board of Directors"), must give written consent thereto.
- b. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the Property, and the rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration with the Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any renovation, change or addition to the covenants established by this Declaration pertaining to the Property except as hereinafter provided.

ARTICLE II

FORMATION, MEMEBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 2.1 Formation. So long as the Declarant owns any portion of the Property in addition to the Common Properties, Declarant, at its election, may form the Association. After the Date the Declarant ceases to own any portion of the Property except any Common Properties, the Association may be formed by the Owners of the Lots if the Owners of all of the Lots assent by at least seventy-five percent (75%)) of all votes of such Lot Owners to create the Association. Any Common Properties shall be deeded by the Declarant to the Association upon its formation. Prior to the formation of the Association, the Declarant shall have the exclusive power and authority to conduct and administer the provisions of this Declaration. The Association shall be

created as a Texas non-profit corporation and the Owners shall file Articles of Incorporation and elect a Board of Directors. After the Association is formed, the business and affairs of the Association shall be conducted and administered in accordance with the terms and provisions of this Declaration and the Association's bylaws which shall be consistent with the provisions of this Declaration. The Declarant shall have no responsibility or liability for (i) the creation, formation, management or operation of the Association, (ii) any actions taken or omitted to be taken by or on behalf of the Association as a result of, in connection with, under or pursuant to this Declaration, (iii) any liabilities, obligations, debts, actions, causes of action, claims debts, suits or damages incurred by or on behalf of or arising in connection with the Association or the duties and obligations of the Association pursuant to this Declaration.

Section 2.2 Membership. Prior to the formation of the Association, each Lot and the Owner thereof shall be subject to and bound by the terms of this Declaration. Upon the formation of the Association in accordance with the provisions of Section 2.1 above, each and every person, persons or legal entity who shall own any Lot, tract or parcel of land in the Property, shall automatically be a member of the Association, PROVIDED that any person or entity who holds such an interest merely as security for the performance of any obligation shall not be a member.

Section 2.3 Voting of Association Members. From and after its formation, each member of the Association shall be entitled to one (1) vote for each one (1) Lot in the Property owned by each such member. When two (2) or more persons or entities hold an undivided interest in any part of the Property, all such persons or entities shall be members of the Association and the vote for such part of the Property shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot in the Property in which such members own undivided interests. When used herein the phrase "a majority vote of the members of the Association" (or similar phrases) shall mean the vote of a simple arithmetic majority of all of the members of the Association at the time the vote is taken.

ARTICLE III

ASSESSMENTS

Section 3.1 Covenants for Assessments. The Declarant, for each Lot, tract or parcel of land owned by it within the Property, hereby covenants, and each purchaser of any such lot, tract or parcel of land, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant to pay to the Declarant or the Association, as applicable: (2) annual assessments or

charges (as specified in Section 3.3 hereof); and (2) special assessments for capital improvements (as specified in Section 3.4 hereof), all of such assessments to be fixed, established and collected from time to time as hereinafter provided. It is expressly acknowledged and agreed by the Declarant that no assessments solely for capital improvements shall be charged or collected with respect to any Lot until a residence is constructed upon each such Lot and the Lot is conveyed to a party purchasing such Lot and residence.

Section 3.2 Purpose of Assessments. The assessments levied by the Declarant or the Association, as applicable, shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property; the improvement, operation, administration, management, preservation and maintenance of the Common Areas and any part thereof; the payment of all expenses and obligations lawfully incurred by the Declarant or the Association, as applicable, in connection with the Common Areas or services for all Lots; and for carrying out the purposes of the Association as stated in its Articles of Incorporation. It is understood that the judgment of the Declarant or the Board of Directors of the Association, as applicable, 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.

Section 3.3 Annual Budget and Annual Assessments. Each fiscal year while this Declaration is in force after the formation of the Association, the Board of Directors shall adopt an annual budget and set the amount of the Annual Assessment to be levied for the next year, taking into consideration Association operating costs for the then current year, expected normal increases in such costs over the next year, and additional future needs of the Association, including the establishment and maintenance of an Association reserve fund as provided for herein. The annual budget shall be adopted by the Board within a reasonable time prior to the commencement of each fiscal year. Notwithstanding the above, in the event the Board fails for any reason to adopt an annual budget covering the succeeding fiscal year, then and until such time as an annual budget shall have been adopted for such succeeding fiscal year, the annual budget currently in effect shall continue and the Annual Assessment shall be deemed the same as for the current year.

Prior to the formation of the Association, the annual assessment per each Lot for each fiscal year by reason of the inclusion of such Lot within the scheme of this Declaration (the "Annual Assessment") shall be set by the Declarant and shall be subject to periodic adjustment by the Declarant. From and after the formation of the Association, the amount to be paid by each Lot owner shall be determined by the Board upon its adoption of the annual budget for such fiscal year in the following manner:

- (a) The aggregate Annual Assessments with respect to any fiscal year shall equal the total amount of the annual budget approved by the Board with respect to such fiscal year; and
- (b) Each Lot owner's pro rata share of the Annual Assessment shall be determined by multiplying the Annual Assessment by a fraction, the numerator of which is the total number of Lots owned by such person or entity and the denominator of which is the total number of Lots located within the Property.

Should any surplus exist at the end of any year, the Board may, at its own discretion, reduce the amount required for the next Annual Assessment. Any Annual Assessment which initially becomes due on a date other than January 1 of any year shall be prorated based upon the number of days remaining in the applicable year.

Section 3.4 Special Assessments. In addition to the Annual Assessments authorized by Section 3.3 hereof, the Declarant may or the Association may, after its formation and by vote of its members as set out in Section 3.6 hereof, levy in any assessment year or years a special assessment (the "Special Assessment") for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described improvement including the necessary fixtures and personal property related thereto, or for carrying out other purposes of the Association as stated in its Articles of Incorporation.

Section 3.5 Vote Required for Increase in Rate of Annual Assessment. From and after the formation of the Association, the increase in the rate or amount of the Annual Assessment as authorized in Section 3.3 hereof must be approved by a majority of the total eligible votes of the membership of the Association as defined in Article II hereof, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all members a reasonable period of time in advance and shall set forth the purpose of the meeting.

Section 3.6 Vote Required for Special Assessment. From and after the formation of the Association, the Special Assessment authorized by Section 3.4 hereof must be approved by a majority of the total eligible votes of the membership of the Association as defined in Article II hereof, voting in person or by proxy, at a meeting duly called for such purposes, written notice of which shall be given to all members a reasonable time in advance and shall set forth the purpose of the meeting.

Section 3.7 Commencement Date of Annual Assessment. The first Annual Assessment provided for herein shall commence and shall accrue on a monthly basis thereafter upon the completion of the construction and development of the Lots upon the Property.

The Annual Assessments (as calculated and accrued in accordance with the preceding sentence) shall be due in full upon the conveyance of a Lot to a home builder which intends to construct a residence for resale thereon and shall continue thereafter on a monthly or annual basis.

Section 3.8 Due Date of Assessments. From and after the payment of the initial accrued and unpaid Annual Assessments by a home builder upon the conveyance of a lot thereto, further Annual Assessments shall become due and payable on a monthly or annual basis, at the discretion of the Declarant or the Association, as applicable, and shall be considered delinquent if not paid within fifteen (15) days of the established due date thereof. The due date and delinquent date of any Special Assessment under Section 3.4 hereof shall be fixed by the Declarant or by the Board of Directors in the resolution authorizing such assessment.

Section 3.9 Owner's Personal Obligation for Payment of Assessments. The Annual and Special Assessments provided for herein shall be the personal and individual debt of the Owner of the portion of the Property covered by such assessments. In the event of default in the payment of any such assessment, the Owner of such portion of the Property shall be obligated to pay interest at a rate per annum equal to the lesser of (i) the highest lawful rate permitted under applicable law or (ii) eighteen percent (18%) on the amount of the assessment from the due date thereof, together with all costs and expenses, including attorneys' fees.

Section 3.10 Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with interest as provided in Section 3.9 hereof and the cost of collection, including attorneys' fees as hereinafter provided, thereupon become a continuing lien and charge on the property covered by such assessment, which shall bind such property in the hands of the Owner, and his heirs, devisees, personal representatives and assigns. The aforesaid lien shall be superior to all other liens and charges against the said property, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust lien of record, securing in either instance sums borrowed for the improvement of the property in question. The Declarant or the Association, as applicable, shall have the power to subordinate the aforesaid assessment lien to any other lien. To evidence the aforesaid assessment lien, the Declarant or the Association, as applicable, shall prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the owner of the property covered by such lien and a description of the property. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Denton County, Texas. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent as set forth in Section 3.8 above and may be enforced by the foreclosure of the

defaulting owner's property by the Declarant or the Association, as applicable, in like manner as a mortgage on real property subsequent to the recording of a notice of assessment lien as provided above; or the Declarant or the Association, as applicable, may institute suit against the owner personally obligated to pay the assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred.

Section 3.11 Common Properties and Incomplete Lots Exempt.

All Lots prior to the completion of the construction and development thereof and all Common Properties and Common Areas as defined in Article I, Section 1.1c hereof, and any common properties of any other association designated on any recorded plat filed by Declarant, and all portions of the Property owned by or otherwise dedicated to any political subdivision, shall be exempted from the assessments and lien created herein.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 4.1 Designation of Committee. From and after its formation, the Association shall have an Architectural Control Committee, which shall consist of three (3) members who shall be natural persons, and who shall be appointed by the Board of Directors of the Association. Until the formation of the Association, the Architectural Control Committee members shall be appointed by and may be removed by the Declarant with or without cause. After the formation of the Association and until January 1, 2000, the appointment of the members of the Architectural Control Committee must be approved by Declarant and any and all members of such committee may be removed by the Board of Directors or the Declarant without cause. After such date, the Board of Directors shall have the exclusive rights and power at any time and from time to time to create and fill vacancies on the Architectural Control Committee. Any first lienholder who acquires Declarant's interest in the Property by foreclosure or deed in lieu of foreclosure shall be the successor of Declarant with respect to the rights and duties granted to and imposed upon Declarant under this Section 4.1 concerning the appointment, removal and approval of members of the Architectural Control Committee.

Section 4.2 Function of Architectural Control Committee. No improvement, as that term is hereinafter defined, shall be erected, constructed, placed, altered (by addition or deletion), maintained or permitted to remain on any portion of the Property until plans and specifications, in such form and detail as the Architectural Control Committee may deem necessary, shall have been submitted to and approved in writing by such Committee. The Architectural Control Committee shall have the power to employ professional consultants to assist it in discharging its duties.

The decision of the Architectural Control Committee shall be final, conclusive, and binding upon the applicant.

Section 4.3 Content of Plans and Specifications. The plans and specifications to be so submitted and approved shall include the following:

- a. A topographical plot showing existing contour grades and showing the location of all improvements, structures, walks, patios, driveways, fences and walls.
- b. Exterior elevations.
- c. Exterior materials, colors, textures and shapes.
- d. Structural design.
- e. Landscaping plan, including walkways, fences and walls, elevation changes, watering systems, vegetations and ground cover.
- f. Parking area and driveway plan.
- g. Screening, including size, location and method.
- h. Utility connections.

Section 4.4 Definition of "Improvement." Improvement shall mean and include all buildings and roofed structures, parking areas, fences, walls, hedges, mass plantings, poles, driveways, swimming pools, tennis courts, signs, and changes in any exterior color or shape. It does not include garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practices and which does not change exterior colors or exterior appearances. It does include both original improvements and all later changes and improvements.

Section 4.5 Basis of Approval. Approval of plans and specifications shall be based, among other things, on adequacy of site dimensions, structural design, conformity and harmony of external design and of location with neighboring structures and sites, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of the protective covenants.

Section 4.6 Failure of the Committee to Act. If the Architectural Control Committee fails to approve or disapprove such plans and specifications or to reject them as being inadequate within a reasonable time after submittal thereof, it shall be conclusively presumed that such committee has approved such plans and specifications, EXCEPT that the Architectural Control Committee has no right or power, either by action or

failure to act, to waive or grant any variances specifically reserved to Declarant in Article V hereof.

Section 4.7 Limitation of Liability. Neither the Declarant, the Association, the Architectural Control Committee nor any of the members of such committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any owner of land affected by this Declaration by reason of mistake or judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans and specifications.

ARTICLE V

PROTECTIVE COVENANTS

RESTRICTIONS ON CONSTRUCTION OR IMPROVEMENTS AND USE OF THE PROPERTY

Section 5.1 Residential Use. All Lots shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family residence per Lot, which residence may not exceed two and one-half (2½) stories in height, and private garage as provided below.

Section 5.2 Single Family Use. Each residence may be occupied by only family members consisting of persons related by blood, adoption or marriage or not more than two (2) unrelated persons living and cooking together as a single housekeeping unit, together with any household servants.

Section 5.3 Garages. Each residence shall have an attached garage suitable for parking not less than two (2) standard size automobiles, which garage conforms in design and materials with the main structure.

Section 5.4 Restrictions on Resubdivision. None of the Lots shall be divided into smaller lots.

Section 5.5 Driveways. All driveways shall be surfaced with concrete.

Section 5.6 Uses Specifically Prohibited.

- a. Trucks, buses, trailers or any other vehicles with tonnage in excess of one ton shall not be permitted to park overnight within the Property, except those used by the Declarant during development of the Property and those used by a builder during the construction of improvements.

- b. No vehicle of any size which transports inflammatory or explosive cargo may be kept at the Property at any time.

- c. No recreational vehicles, boats, or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pickup trucks, pickup trucks with attached bed campers that are in operational condition and have current licensed plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas. All vehicles, boats or similar equipment must be parked or stored on paved driveways or surfaces, subject to the above stated restrictions.

- d. No structure of a temporary character, such as a trailer, basement, tent, shack, barn or other out-building shall be used on any property at any time as a dwelling house; provided, however, any builder may maintain and occupy model houses, sales offices and construction trailers during the construction period.

- e. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted at the Property, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon or in any part of the Property. No derrick or other structure designed for use in quarrying the boring of oil, natural gas or other minerals shall be erected, maintained or permitted within the Property.

- f. No animals, livestock or poultry or any kind shall be raised, bred or kept on any property in the Property except dogs, cats or other household pets which may be kept for the purposes of providing companionship for the private family. Animals are not to be raised, bred or kept for commercial purposes or for food. No person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, quinea fowls, ducks, chickens, turkeys, skunks, or any other animals which may interfere with the quietude, health or safety of the community. No more than four (4) pets of any kind will be permitted on each Lot. Pets must be restrained or confined on the homeowner's back Lot inside a fenced area or within the house. It is a pet owner's responsibility to keep the Lot clean and free of pet debris. All animals must be properly tagged for identification and each pet owner shall obtain and retain evidence that all inoculation requirements of the County and the State of Texas have been met.

- g. No Lot or other area in the Property shall be used as a dumping ground for rubbish. Trash, garbage, grass and tree/shrub clippings or other waste shall be kept in sanitary containers in appropriate locations and such containers shall be situated, enclosed, screened or otherwise secured in a manner so as not to be accessible to stray animals or visible from any residential street, private drive or adjacent Lot. Materials incident to construction of improvements may be temporarily stored on Lots during construction so long as construction progresses without undue delay.
- h. No individual water supply system shall be permitted in or on the Property or on the Lot.
- i. No individual sewage disposal systems shall be permitted in or on the Property or any Lot.
- j. No garage, garage house, mobile home, or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied or located in or on the Property by any Owner, tenant or other person prior to the erection of a residence.
- k. No air-conditioning apparatus or evaporative cooler shall be installed in front of a residence on any Lot, nor shall same be attached to any front wall or window of a residence on any Lot. All utility meters, equipment air-conditioning compressors, air-conditioning and heating units and similar items placed on any Lot must (to the extent reasonably practicable) be visually screened from the street and adjoining Lots.
- l. All antennas or any other electronic or satellite communication equipment, including any type of parabolic reflector, satellite dish or other high gain antenna system(s) or structures, must be located as inconspicuously as possible while maintaining the functionality of the equipment.
- m. No Lot or improvement shall be used for business, professional, commercial or manufacturing purposes of any kind. No activity, whether for profit or not, shall be conducted which is not related to single-family residential purposes. No noxious or offensive activities shall be undertaken within the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this paragraph shall prohibit a builder's temporary use of the residence as a sales office until such builder's last residence at the Property is sold. Nothing in this subparagraph shall prohibit an Owner's use of a

residence for quiet, inoffensive activities such as tutoring or giving art lessons so long as such activities do not materially increase the number of cars parked on the street or interfere with adjoining homeowners' use and enjoyment or their residences and yards.

- n. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between three (3) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten (10) feet from the intersection of the street right-of-way lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within the (10) feet from the intersection of a street right-of-way line which the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance at a sufficient height to prevent obstruction of such sight lines.
- o. Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.
- p. Within easements on each Lot, no structures, plantings or materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, which may change the direction of flow within the drainage channels or which may obstruct or retard the flow of water through drainage channels.
- q. The general grading, slope and drainage plat of a Lot may not be altered by more than six (6) inches without prior written approval of the City and other appropriate agencies having authority to grant such approval.
- r. No sign of any kind shall be displayed in public view on any Lot except one (1) professional sign of not more than five (5) square feet advertising the property for sale, or professional signs not exceeding nine (9) square feet used by a builder to advertise the property during the construction and sale period. Declarant or its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing requirements, and in so doing

shall not be subject to any liability for trespass or any other liability in connection with such removal.

- s. The drying of clothes in full public view is prohibited in the Property. The owners and occupants of any Lots at the intersections of streets or adjacent to parks, playgrounds or other facilities where the rear yard is visible to full public view shall construct a drying yard or other suitable enclosure to screen from public view the equipment which is incident to normal residences, such as clothes drying equipment, yard equipment and storage piles.
- t. Except within fireplaces in the main residential dwelling and except for outdoor cooking, no burning of anything shall be permitted anywhere within the Property.
- u. No carport shall be permitted on a Lot.
- v. All fences shall be constructed of wood, stone, wrought iron or masonry. All fences shall be a maximum of eight (8) feet in height. All fences constructed of wood pickets shall be of the flat picket design.
- w. No abandoned, derelict or inoperative vehicles may be stored or located on any Lot unless visually screened from other Lots and from any residential street.
- x. The provisions of all zoning ordinances and building codes affecting all or any part of the Property and/or Lots(s) and in effect as of the date of this document shall be complied with, whether or not they are specifically addressed in the foregoing.

Section 5.7 Sidewalks. All sidewalks shall conform to City specifications and regulations.

Section 5.8 Mailboxes. Mailboxes shall be constructed of brick and masonry shall be located at the curb in front of each house and shall be of standardized construction and appearance similar to other mailboxes in the Property.

Section 5.9 Commencement of Construction. Each residence constructed on each Lot and any other improvements thereto shall be commenced and completed with due diligence.

Section 5.10 Utilities. Except as to special street lighting or other aerial facilities which may be required by the City or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type

(except meters, risers, service pedestals, transformers and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed in the Property whether upon 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 utility service facilities (including but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility.

Section 5.11 Restricted Area. Declarant and/or the Association, whichever is applicable, shall have the right to erect, install, maintain, repair and/or replace fences, walls, and/or sprinkler systems within those portions (hereinafter referred to as the "Restricted Area") of any Lot which are situated between the property line of such Lot and the set-back or site lines (as established by the Plat, this Declaration or any governmental entity) of such lot. If any fence, wall or sprinkler system is erected or installed on any Lot, such fence, wall or sprinkler system shall be the property of the Owner of the Lot upon which such fence, wall or sprinkler system is erected or installed, subject to the easements and rights of the Declarant set forth herein. No fence, wall or sprinkler system shall be erected or installed in the Restricted Area by the Owner of the affected Lot without the prior written consent of the Declarant. Declarant shall have the right, but not the obligation, to grade, plant and/or landscape and maintain, repair, replace and/or change such grading, planting and landscaping on any portion of the Restricted Area of the Lot. Declarant shall have the right and easement to enter upon the Restricted Area for the purpose of exercising its discretionary rights set forth in the Section 5.11. Each Owner, as grantor, grants to each Owner of immediately adjacent Lots, as grantee, a reciprocal easement for the encroachment of any common fence upon such grantor's Lots; provided, however, no such encroachment shall extend more than two (2) feet into such grantor's Lot.

ARTICLE VI

MAINTENANCE

Section 6.1 Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Easements are also reserved for the installation, operation, maintenance and ownership of utility service lines from the property lines to the residences. The Declarant and/or the Association reserves the right to make changes and additions to the above easements for the purpose of most efficiently and economically installing improvements. By acceptance of a deed to any Lot, the Owner thereof covenants and agrees to mow weeds and grass and to keep and maintain in a neat and clean condition any easement which may traverse a portion of

the Lot. Declarant or Association shall have no affirmative obligation to maintain said easements.

Section 6.2 - Recorded Plat. All dedications, limitations, restrictions and reservations shown on the Plat are incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed or to be executed by Declarant, conveying Lots in the Property, whether specifically referred to therein or not.

Section 6.3 - Lot Maintenance. The Owner and occupant of each Lot or any part of the Property shall cultivate an attractive ground cover or grass on all yards visible from the street, shall maintain the yards in a sanitary and attractive manner and shall edge the street curbs that run along the property line. Grass, weeds and vegetation on each Lot must be kept mowed at regular intervals so as to maintain the property in a neat and attractive manner. No vegetables shall be grown in any yard that faces a street. No owner shall permit weeds or grass to grow to a height of greater than six (6) inches upon his property. If after ten (10) days prior written notice, an Owner of a Lot shall fail to: (a) control weeds, grass and/or other unsightly growth, (b) remove trash, rubble, building and construction debris, (c) exercise reasonable care and conduct to prevent or remedy an unclean, untidy or unsightly condition, or (d) otherwise satisfy the aforesaid maintenance requirements, then Declarant and/or the Association shall have the authority and right to assess and collect from the owner or said Lot the amount so expended by Declarant or Association in connection with mowing, cleaning or maintenance.

Section 6.4 Maintenance of Improvements. The Owner and occupant of each Lot or any part of the Property shall maintain the exterior of all buildings, fences, walls and other improvements on his Lot in first class condition and repair, and shall replace worn and rotten parts, and shall regularly repaint all painted surfaces and shall not permit the roof, rain gutters, down spouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate in an unattractive manner.

Section 6.5 Enforcement. If, in the opinion of Declarant or the Association, as applicable, any such owner or occupant has failed in any of the foregoing duties or responsibilities, then Declarant or the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care and maintenance required. Should any person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise

to any person. The owners and occupants (including lessees) of any part of the Property on which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse Declarant or the Association for such cost. If such Owner or occupant shall fail to reimburse Declarant or the Association within thirty (30) days after receipt of a statement for such work from Declarant or the Association, then said indebtedness shall be a debt of all of said persons jointly and severally, and shall constitute a lien against that portion of the Property on which said work was performed. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in Section 3.10 above, which provisions are incorporated herein by reference, and Declarant or the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

ARTICLE VII

COMMON PROPERTIES

Section 7.1 Easements of Enjoyment. Subject to the provisions of Section 7.3 hereof, every member of the Association shall have a right and easement of enjoyment in and to the Common Properties.

Section 7.2 Title to Common Properties. Declarant shall convey ownership of the Common Properties to the Association which shall be responsible for their operation and maintenance, within sixty (60) days after Declarant receives written notice of the formation of the Association, in accordance with the provisions of this Declaration, together with such evidence of the formation of the Association as the Declarant may reasonably request.

Section 7.3 Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Declarant or the Association, as applicable, to prescribe rules and regulations for the use, enjoyment and maintenance of the Common Properties.
- b. The right of the Declarant or the Association, as applicable, to sell and convey the Common Properties, or any part thereof, provided, after the formation of the Association, such sale or conveyance is approved by a majority of the total eligible votes of the membership of the Association as defined in Article II hereof, voting in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all members a reasonable period of time in advance and shall set forth the purpose of the meeting.

- c. The right of the Declarant or the Association, as applicable, to borrow money for the purpose of improving the Common Properties, the Restricted Area or any part thereof, and to mortgage the Common Properties, or any part thereof.
- d. The right of the Declarant or the Association, as applicable, to take such steps as are reasonably necessary to protect the Common Properties, or any part thereof, against foreclosure.
- e. The right of the Declarant or the Association, as applicable, to suspend the easements of enjoyment of any member of the Association during which time any assessment levied under Article III hereof remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1 Duration. This Declaration and the covenants, restrictions, charges, and liens set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant or the Association, as applicable, and every owner of any part of the Property and their respective legal representatives, heirs, successors and assigns, for a term beginning on the date this Declaration is recorded, and continuing through and including January 1, 2025, after which time said covenants shall be automatically extended for successive periods of five (5) years unless a change (the word "change" including additions, deletions or modification thereto, in whole or in part) at any time, either prior to or subsequent to January 1, 2025, is approved by a majority of the total eligible votes of the membership of the Association as defined in Article II hereof, voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all members a reasonable period of time in advance and shall set forth the purpose of such meeting.

Section 8.2 Amendment. Until the sale by Declarant of ninety percent (90%) of the total number of Lots in the Property to third parties unrelated to Declarant, Declarant, its successors or assigns, at its discretion, may abolish or amend the covenants, conditions and restrictions set forth herein in whole or in part. Subsequent to such sale and so long as Declarant owns at least one (1) Lot, Declarant may amend the covenants, conditions and restrictions set forth herein. For the five (5) years following the recording of this Declaration, no amendments of the covenants, conditions and restrictions set forth herein shall be valid or effective without the joinder of Declarant.

Section 8.3 Enforcement. Declarant, the Association and/or the owner of any Lot in the Property shall have easement and right to have each and all of the foregoing restrictions, conditions and covenants herein faithfully carried out and performed with reference to each and every Lot in the Property, together with the right to bring suit or undertake any legal process that may be proper to enforce the performance thereof, it being the intention hereby to attach to each Lot in the Property, without reference to when it was sold, the right and easement to have such restrictions, conditions and covenants strictly complied with, such right to exist with the owner of each Lot and to apply to all other Lots in the Property whether owned by the undersigned, its successors and assigns, or others. Failure by any owner, including Declarant, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The rights created herein are unique and enforceable by specific performance.

Section 8.4 Other Authorities. If other authorities, such as the City or County, impose more demanding, expensive or restrictive requirements than those set forth herein, the requirements of such authorities shall be complied with. Other authorities' imposition of lesser requirements than those set forth herein shall not supersede or diminish the requirements herein.

Section 8.5 Severability. If any condition, covenant or restriction herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remain in full force and effect.

Section 8.6 Binding Effect. Each of the conditions, covenants, restrictions and agreements herein contained is made for the mutual benefit of, and is binding upon, each and every person acquiring any part of the Property, it being understood that such conditions, covenants, restrictions and agreements are not for the benefit of the Owner of any land except land in the Property and the same shall inure to the benefit of owners of land in the Property and Declarant, its successors and assigns. This instrument, when executed, shall be filed of record in the Deed Records of the County so that each and every Owner or purchaser of any portion of the Property is on notice of the conditions, covenants, restrictions and agreements herein contained.

Section 8.7 Responsibility of Declarant. The Declarant shall not be responsible for the acts or omissions of an individual, entity or other owners other than the Declarant.

Section 8.8 Captions. Captions are for convenience only and shall have no effect in the construction of this instrument.

Section 8.9 Assignment. The Declarant shall have the right to assign all or any part of its rights, privileges, duties and obligations hereunder at any time including without limitation the right to collaterally assign all or part of any first lien mortgage securing Declarant's interest in the Property.

EXECUTED this 21st. day of November, 1995.

DECLARANT:

INTERVEST-VALLEY OAKS, LTD.,
A Texas limited partnership,

By: Intervest-Holdings Limited,
A Texas limited liability
Company,
General Partner

BY: John A. Raphael,
Manager

THE STATE OF TEXAS S
 S
COUNTY OF DALLAS S

This instrument was acknowledged before me on November 21st, 1995, by John A. Raphael, a Manager of Intervest-Holdings Limited, a Texas limited liability company, in its capacity as the sole general partner of INTERVEST-VALLEY OAKS, LTD., a Texas limited partnership, on behalf of said partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 21st. day of November, 1995

Notary Public, State of Texas
Printed Name: Deborah L. Leonard

My Commission Expires
2-13-97

Filed for Record in:
DENTON COUNTY, TX
HONORABLE TIM HODGES/COUNTY
CLERK

On Dec 18 1995
At 8:11am

Doc/Num :95-R0078149
Doc/Type : DEC
Recording: 43:00
Doc/Mgmt : 6.00
Receipt #: 35135
Deputy - CASSY

SUPPLEMENTARY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE LOTS IN VALLEY OAKS

The homeowners of the Valley Oaks Subdivision, County of Denton, State of Texas, have agreed on August 20, 2000 in the majority to amend the covenants executed by Intervest-holdings Limited and filed in the County of Denton on December 18, 1995. These covenants are filed as Document number 95-R0078149. Amendments are being filed in the following manner.

ARTICLE V

PROTECTIVE COVENANTS

Section 5.6 Uses Specifically Prohibited.

Item "L" Speaks to the placement of antennas. This amendment **strikes** the words "within the attic of the residence or visually screened from the street and adjoining lots" and **adds** the phrase, "as inconspicuously as possible while maintaining the functionality of the equipment".

Ed. Note: Recent court rulings have determined that homeowner's associations do not have authority to control radio signal reception by limiting the placement of antennas.

Item "V" Speaks to fence construction. This amendment **adds** "wrought iron" to the first sentence listing acceptable types of fence construction, and **strikes** the phrase "and such fences shall be capped with a wooden rail or similar material."

Ed. Note: Original construction by the builders included wrought iron fences at the Valley Oaks Portal. None of the original wooden fence construction complied with the cap rail requirements.

Section 5.8 Mailboxes.

Requires that cast stone address plates be placed on mailboxes. This amendment **strikes** the phrase, "contain a cast stone address plate."

Ed. Note: Address plates were installed on the houses and not on the mailboxes.

Section 6.3 Lot Maintenance

Speaks to the maintenance and grooming of the properties. This amendment **deletes** the sentence, "No foundation planting, shrub or other vegetation near the house shall be allowed to grow above the bottom of any window."

Ed. Note: This section already addresses control of weeds, grass and unsightly growth. The original landscaping provided by the builder included shrubs directly in front of windows and well above the bottom of such windows.

Section 8.9. Assignments. The Declarant shall have the right to assign all or any part of its rights, privileges, duties and obligations hereunder at any time including without limitation the right to collaterally assign all or part of any first lien mortgage securing Declarant's interest in the Property.

Executed this 24th day of July 2001.

Declarant:

Valley Oaks Homeowners Association
A Texas Limited Liability Company

By: Valley Oaks Homeowners Association,
A Texas Limited Liability Company
Board of Directors

BY: Karl Q. Barnett, President
Valley Oaks Homeowners Association

Subscribed and sworn to before me this 24th. Day of July, 2001.

Velda Shults, Notary Public