

Hidalgo County
Arturo Guajardo Jr.
County Clerk
Edinburg, TX 78540

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Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
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J Q S INVESTMENTS L.P.
3907 S SUGAR RD
EDINBURG TX 78539

User / Station: I Leal - Cash Station 02



STATE OF TEXAS
COUNTY OF HIDALGO

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas

Arturo Guajardo Jr.
County Clerk
Hidalgo County, TX

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
MADISON PARK SUBDIVISION, PHASE I**

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HIDALGO	§	

THAT J.Q.S. INVESTMENTS, L.P. hereinafter called "**Declarant**", being the owner of the hereinafter described property, does hereby make and publish the following limitations and restrictions which are to apply to and become a part of all contracts of sale, deeds or other legal instruments whereby title or possession is divested out of the present owners and invested in other person or persons, to any and all Lots and block described as follows:

Lots one (1) through ninety-two (92), inclusive, **MADISON PARK SUBDIVISION, PHASE I**, Hidalgo County, Texas, as the same is recorded in Volume 52, Page 16, Map Records, Hidalgo County, Texas, sometimes referred to as "MADISON PARK PHASE I".

to all of which the undersigned does hereby bind itself as the sole owner of said Lots and blocks.

WHEREAS, Declarant desires to subject all of the above-described property to the protective covenants, conditions, restrictions, liens and charges as hereinafter set forth, pursuant to an established general plan for the improvement and development of said property;

NOW, THEREFORE, it is hereby declared that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and shall be binding on all parties having any right, title, or interest in or to the above described property of any part thereof, and their heirs, successors and assigns, and which easement, restrictions, covenants and conditions shall inure to the benefit of each owner thereof.

**ARTICLE I.
DEFINITIONS**

Section 1. "**Association**" shall mean and refer to **MADISON PARK SUBDIVISION OWNERS ASSOCIATION, INC.**, a non-profit corporation, its successors and

assigns, which was formed by the Owners for the purpose of enforcing the covenants, restrictions and agreements set forth herein.

Section 2. **"Board of Directors"** shall mean and refer to the Board of Directors of the Association which will be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association.

Section 3. **"Bylaws"** shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 4. **"Committee"** shall mean the Architectural Control Committee as the same is set out in Article X hereinafter.

Section 5. **"Common Area"** shall mean and refer to all real property located within the boundaries of the Subdivision that are not otherwise located within or on a part of any Lot, as set forth on the plat or map of the Subdivision as recorded in the Map Records of Hidalgo County, Texas, along with any improvements located thereon, including, but not limited to, the Subdivision streets, the perimeter fence constructed by the Declarant, the gates, and all landscaping and area lights provided by the Declarant for the benefit of the Subdivision.

Section 6. **"Declarant"** shall mean and refer to J.Q.S. INVESTMENTS, L.P., in its capacity as the initial developer of the Subdivision, and its successors and/or assigns, provided that in order to be a successor or assignee declarant, the subsequent developer must acquire all of the remaining Lots which have not been initially sold by the initial developer.

Section 7. **"Lot"** shall mean any of the numbered Lots one (1) through ninety-two (92) shown in the recorded Subdivision map referred to above with the exception of the common area. If a numbered plot of land lies between two (2) other numbered Lots and said middle numbered plot of land is acquired in fractions by the two (2) adjoining property owners, then the expanded plot of land containing the initial numbered area, plus the additional fraction, shall still be considered to be as if the same were one for purposes of voting (See Article II, Section 3).

Section 8. **"Maintenance"** shall mean the exercise of reasonable care to keep buildings, Subdivision streets, alleys, curbs, fences, sprinklers, fountains, signs, landscaping, lighting, and other related improvements and fixtures, whether enumerated or not, in the Common Area, in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy weed-free environment for optimum plant growth. The Association will maintain any fence constructed by the Declarant.

Section 9. **"Member"** shall mean every person or entity that holds membership in the Association.

Section 10. **"Member in Good Standing"** shall mean and refer to each member of the Association who (i) is not in default in payment of any assessments levied by the Association in accordance with the terms of the Declaration; (ii) nor in receipt of a notice of default from Declarant or the Association pertaining to any default under the Declaration or any rule or regulation promulgated by the Association, which default remains uncured in the opinion of the Declarant; (iii) nor named as a party in any pending legal action, suit or proceeding involving an alleged violation of the Declaration brought by the Declarant, the Association, or any other party with standing to enforce any provision of the Declaration.

Section 11. **"Mortgage"** shall mean a conventional mortgage or a deed of trust.

Section 12. **"Mortgagee"** shall mean a holder of a conventional mortgage or a beneficiary under or holder of a deed of trust.

Section 13. **"Owner"** shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a party of the property, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation.

Section 14. **"Subdivision"** shall mean the subdivided real property hereinbefore described and such additions thereto as may be brought within the jurisdiction of the association as hereinafter provided.

Section 15. **"Properties"** Properties shall mean all ninety-two (92) of the numbered Lots together with the common area, as said words are defined hereinabove.

Section 16. **"Property"** Any one of the individual properties noted hereinabove or defined hereinabove.

ARTICLE II.

ASSOCIATION MEMBERSHIP, VOTING RIGHTS AND POWERS

Section 1. **"Membership"** Every Owner of a Lot shall be a member of the Association. One or more Owners of a Lot shall be able to vote one vote per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 2. **"Voting Rights"** The association shall have two (2) classes of voting members as follows:

Class A Class A members shall be all Owners with the exception of Declarant, and shall be entitled to votes as follows:

Lots one (1) through ninety-two (92) shall be entitled to one vote each.

When more than one person holds an interest in a given Lot, all such persons shall be members and the vote(s) for such Lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any Lot owned by Class A members.

Class B. The Class B member shall be Declarant, who shall be entitled to exercise two (2) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

Section 3. **"Partial Lot Voting"** any owner acquiring additional property or properties immediately adjacent to its initial numbered Lot, as provided in Article I, Section 7, shall not be entitled to additional votes as a result of such additional properties, save and except the acquisition, of more than fifty percent (50%) of such adjacent Lot, in which case, Owner shall be entitled to one additional vote for said additional property. Any owner who has sold a minor portion of its Lot, but in any event less than fifty percent (50%) of its Lot, with prior written approval of the Committee as provided for herein, shall be entitled to a full vote as a result of such ownership.

Section 4. **"Powers"** The Association, in addition to the powers it already possesses in its charter, shall have the power to own real and personal property, to open bank accounts, to enforce this Declaration as herein provided, to obtain a policy or policies of insurance insuring the Association and its members, to make physical improvements to the common area as the Association shall deem to be in the best interest of the Subdivision and the Owners, to contract for legal, accounting and other professional services, to contract for security, paving, landscaping and/or any other services, to borrow funds, to employ employees directly or through an operator, to bring an action(s) for injunctive relief and/or damages against any Owner for failure to comply with any Article and/or Section herein, and to otherwise do that which it believes necessary to protect or defend the common area and facilities located therein, the association and/or any of its properties from loss of damage, by suit or otherwise.

Section 5. **"Board of Directors"** The affairs of the Association shall be managed by a Board of Directors which will be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association. The number of directors and the initial members of the Board of Directors shall be as set forth in the Articles of Incorporation of the Association.

ARTICLE III. ASSESSMENTS

Section 1. **"Lien and Personal Obligation of Assessments."** Declarant hereby covenants for each Lot within the Subdivision, and each owner of a Lot is hereby deemed to covenant by acceptance of his deed for such Lot, whether or not it shall be so expressed in his

deed, to pay to the association (1) annual assessments (2) special assessments for capital improvements, and (3) special assessments for maintenance improvements. Such assessments will be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost, and reasonable attorney's fees, shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person or persons who owned the Lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly assumed by them. However, all future transferees of Lots shall have the obligation, prior to purchase, to verify with the Association and/or Declarant that such assessments have been paid to date and that the property to be acquired is free and clear of all assessed indebtedness.

Section 2. **"Purpose of Annual Assessments"** The annual assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the owners and/or their patrons in the subdivision, and for the improvements, security, preservation, operation and Maintenance of the Common Areas and/or of improvements situated within same or within the control of the Association. Annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from annual assessments, the following:

- (a) Maintenance and repair of the Common Area to the extent not performed by governmental authority or an owner.
- (b) Water, sewer, garbage, electrical, lighting, telephone, gas and other necessary utility service for the common area.
- (c) Acquisition of furnishings and equipment for the common area as may be determined by the association, including without limitation all equipment furnishings, and personnel necessary.
- (d) Maintenance and repair of all structures in the common area, if any, including but not limited to alleys, fences, gates, sprinkler systems, storm drains, sanitary sewers, street lighting, traffic markers, signs and private streets within the confines of the Subdivision and/or any maintenance and repair required by the City of Edinburg.
- (e) Fire insurance, if obtainable, covering the full insurable replacement value of the common area with extended coverage.
- (f) Liability insurance insuring the Association against any and all liability to the public, to any owner, or the invitees or tenants of any owner arising out of their occupation and/or use of the common area. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association.

(g) Workmen's compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the Board of Directors of the Association.

(h) A standard fidelity bond covering all members of the Board of Directors of the Association on all other employees of the Association in an amount to be determined by the Board of Directors.

(i) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this declaration or by law, or which shall be necessary or proper in the opinion of the Board of Directors of the Association for the operation of the common areas, for the benefit of Lot owners, or for the enforcement of these restrictions.

(j) In addition to the Maintenance of the Common Areas, the Association may provide exterior Maintenance on each Lot as follows. In the event an Owner of any Lot, its family, guests, invitees, agents or other persons using the Lot, shall fail to maintain the premises and the improvements thereon in a reasonably neat and orderly manner, the Association, Declarant or the Committee shall have the right, through their agents and employees, to enter upon said Lot and repair, maintain and restore the Lot and exterior of the buildings and any other improvements erected thereon, all at the expense of the Owner, and such expense of Maintenance or repair shall be added to and become part of the assessment to which said Lot is subject to.

(k) Maintenance and repair of all structures or improvements, formerly within the Common Areas, if any, and which may be situated in an area dedicated and/or transferred to the public use in the future, as set forth in Article IV, Section 1 (b), for which the Association reserved the right to continue the operation and concurrently has the obligation to maintain and repair.

(l) Maintenance repair of the streets located in the Subdivision.

(m) In addition to the expenses for actual maintenance, the Association may assess a charge for reserve for purposes of making capital improvements for the Subdivision streets or for the Common areas including but not limited to the Subdivision street(s), gate(s) and the perimeter fence constructed by the Declarant.

Section 3. "Fixing of and Maximum Annual Assessments"

(a) Until December 31, 2007, the maximum annual assessment per Lot shall be \$300.00 per Lot for Lots one (1) through ninety-two (92), prorated quarterly, subject to Section 6 below. Declarant shall monitor the expenses actually incurred within the first

three (3) months after the execution of this Declaration and set a quarterly amount necessary to meet the actual expenses, but not to exceed the amount set out hereinbefore.

- (b) Commencing with January 1, 2008, and continuing thereafter, all assessments shall be fixed by the Association in advance of January 1st of each calendar year, after giving due consideration to the anticipated cost of all common area maintenance obligations, and other costs of operating the Association. The Association shall have the right to collect such assessments in advance on either an annual or quarterly basis. If at any time the association determines that the assessments for that fiscal year are insufficient to discharge all assessments to be incurred or payable during the assessment year by the Association, the Association may increase the assessments to cover such costs (incurred or to be incurred), and such increase shall become effective at the beginning of the next annual or quarterly assessment period. If required, assessments shall be prorated for the period from the commencement thereof to the end of the then current calendar year of the association.
- (c) From and after January 1, 2008 to December 31, 2008 the maximum annual assessment may be increased each year not more than twenty five percent (25%) above the maximum assessment for the previous year without a vote of the members.
- (d) From and after January 1, 2009 to December 31, 2009, the maximum assessment may be increased above twenty five percent (25%) from the prior year by the vote or written assent of a majority of each class of members.
- (e) The board of directors of the association may fix the annual assessment at an amount not in excess of the maximum prescribed herein.

Section 4. **"Special Assessments for Capital Improvements"** In addition to the annual assessments authorized above, the 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 costs of any construction, reconstruction, repair, or replacement of a capital improvement (including, but not limited to streets, alleys, lighting, and/or utilities) on the common area, including fixtures and personal property related thereto. Any such assessment must be approved by a majority of each class of members.

Section 5. **"Notice and Quorum for Action Authorized Under Section 3 and 4"** Written notice of any meeting called for the purpose of taking any action authorized by section 3 and 4 shall be sent to all members not less than three (3) nor more than ten (10) days in advance of such meeting. In the event the proposed action is favored by a majority of the votes cast at such meeting, but less than the requisite majority of each class of members who were not present

in person or by proxy may give their assent in writing three (3) days after the date of such meeting.

Section 6. **"Uniform Rate of Assessment"** Both annual and special assessments must be fixed at a uniform rate for all Lots, except where additional real estate is added to the initial Lot and in such case, that specific assessment shall be increased proportionately to the additional amount of land annexed.

Section 7. **"Commencement and Collection of Annual Assessments"** The annual assessments provided for herein shall commence as to all Lots on recording of the Subdivision plat. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The board of directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. Assessments may be made payable monthly. Notice of the annual assessments shall be sent to every owner subject thereto. The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessment against a specific Lot has been paid, and may, on or before February 15th of each year, cause to be recorded in the office of the County Clerk of Hidalgo County, Texas, a list of delinquent assessments as of that date.

Section 8. **"Effect of Nonpayment of Assessments, Remedies of the Association"** Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest at the maximum rate permitted by law from the due date until paid. The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the property. The lien may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Tex. Pro. Code Ann. Section 51.002, as it may be amended from time to time (the "Foreclosure Statute"), in like manner of any deed of trust on real property. In connection with the lien created herein, each Owner grants the Association, whether expressed in the deed or other conveyance to the Owner, a power of sale to be exercised in accordance with the Foreclosure Statute. At any foreclosure proceeding, any person, including, but not limited to the Association and any Owner, shall have the right to bid for the Lot at the foreclosure sale and to acquire and hold, lease mortgage and convey the same. During the period in which a tract is owned by the Association following foreclosure, no assessment shall be levied on it. Suit to recover a money judgment for unpaid assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

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.

Section 9. **"Subordination of Assessment Lien to Mortgages"** The assessment lien provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to

a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the assessment lien as to payment, which becomes due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IV. **PROPERTY RIGHTS**

Section 1. **"Owner's Easement of Enjoyment"** Every owner of each Lot shall have the right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title of such Lot, subject to the following rights of the Association:

(a) The right to suspend the voting rights of any owner for periods during which assessments against his Lot remain unpaid, and the right after hearing by the Board of Directors, to suspend such rights for a period not exceeding three hundred sixty five (365) days for any infraction of the published rules and regulations of the Association.

(b) The right to dedicate or transfer all or any part of the Common Area, including any improvements, to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument executed by two-third (2/3) of each class of members agreeing to such dedication or transfer has been duly recorded.

Section 2. **"Delegation of Use"** Subject to such limitations as may be imposed by the bylaws; each owner may delegate his right of enjoyment in and to the common areas and facilities to the members of his family, his guest, tenants, and invitees.

Section 3. **"Easements of Encroachment"** There shall exist reciprocal appurtenant easements as between adjacent Lots and any portion or portions of the common area adjacent thereto for any encroachment due to the unintentional placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction or alteration is in accordance with the terms of this declaration. Such easement shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between adjacent Lots, and between each Lot and any adjacent portion of the common area, along a line perpendicular to such boundary at such point. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an owner.

Section 4. **"Other Easements"**

(a) Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded Subdivision map. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities which may damage, interfere with or change the direction of flow of drainage facilities in the easements. The easement area of each Lot and all

improvements therein shall be continuously maintained by the owner of such Lot, except for improvements for maintenance of which a public authority or utility company is responsible.

(b) No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.

(c) There shall exist appurtenant easements of access to all designated common areas, private streets, and alleys and, as necessary, Lots within the Subdivision to the City of Edinburg for the use of personnel and equipment on city business.

Section 5. **"Right of Entry"** The association, through its duly authorized employees, contractor, and delegated agents, shall have the right after reasonable notice to the owner thereof, to enter any Lot at any reasonable hour on any day to perform such maintenance as may be authorized herein, save and except in case of an emergency, which threatens either life or property, in which case advance notice shall not be required.

Section 6. **"No Partition"** There shall be no judicial partition of the common area, nor shall Declarant, or any owner or any other person acquiring any interest in the Subdivision, or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co-tenancy.

Section 7. **"Future Subdivision Development"** Declarant, its successors or assigns, reserve the right to use all easements and streets in this Property in connection with future residential development near the Property. Owners shall not have a claim for damages injunctive relief, or any claim of whatsoever kind or nature based upon such use.

ARTICLE V. USE RESTRICTIONS

Section 1. **"Residential Use"** All Lots, and each and every one thereof, are for single-family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanatorium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on such premises, or on any part thereof, save and except the business of the Declarant and the transferees of the Declarant in developing all of the Lots as provided in Section 22 below. No improvement or structure, other than a quality private dwelling house, patio walls, swimming pool, garage, carport, or servants' quarters may be

erected, altered, placed or maintained or permitted to remain on any Lot in the Subdivision, without the express written consent of the Committee.

Section 2. **"Construction Specifications"** Construction specifications for all residences constructed on any Lot are as follows:

- (a) **Single Story Residence.** Any single story residence constructed on said Lots must be not less than two thousand (2,000) square feet of living area, exclusive of open or screened porches, terraces, patios, driveways, carports and garages.
- (b) **Two Story Residences.** Any two story residence constructed on said Lots must have not less than two thousand two hundred (2,200) square feet of living area, exclusive of open or screened porches, terraces, patios, driveways, carports and garages. The ground floor living area of any two-story residence shall not have less than twelve hundred (1,200) square feet of living area, exclusive of open or screened porches, terraces, patios, driveways, carports and garages.
- (c) **Exterior.** The exterior walls of each residence shall consist of at least ninety percent (90%) stucco with a maximum of 10% of the exterior walls to be accented by stone or brick.
- (d) **Roof.** The roof slope for a single-story residence shall be a minimum of 7:12 unless approved by the Declarant and/or the Association. The roof slope for a two-story residence shall be a minimum of 5:12 unless approved by the Declarant and/or the Association.

The roof shall be constructed of concrete or clay tile or standing seam metal if the roof is a pitched roof and the roof is visible from ground level.

Flat roofs, whereby the roof material is not visible from ground level, are permitted for both single-story and two-story residences. In the case of flat roofs, roof materials other than the ones mentioned hereinabove are allowed, if approved by the Committee, and as long as the roof material is not visible from ground level.

- (e) **Plate Height.** The plate height, as used in the construction industry, must be at least 8 feet high.
- (f) **Air Conditioner.** No evaporative cooler or air conditioner shall be placed, installed, or maintained on the roof or wall of any building or structure. All coolers and air conditioning units shall be concealed and in the back or side of the residence.

- (g) Septic Tanks. No privy, cesspool or septic tank shall be placed or maintained in the Property.
- (h) Clothes Lines. No clothing or other materials shall be aired or dried within the boundaries of the Property except in an enclosed structure not visible from any street.
- (i) Completion. Any construction of any improvement or structure that is commenced on any Lot must be completed on or before 240 days after the commencement of the same. Commencement of construction of a building requiring a foundation is deemed to be the date on which the foundation is poured and/or laid.

Section 3. "Setbacks" All setbacks will be as indicated on the most recent version or amendment of the recorded plat map for Madison Park subdivision. All residences constructed in the Subdivision shall face in the same direction as the rest of the residences on the same side of the street.

Section 4. "Consolidation and Partial Lots" None of said Lots shall be resubdivided in any fashion, except that any person owning two (2) or more adjoining Lots may consolidate such Lots into a single building site, with the privilege of constructing improvements thereon as permitted by Section 2 and 3 herein. However, any sale of a portion or fraction of a Lot must be approved by a unanimous vote of the Committee, and then only if the remaining portion is of sufficient square footage to viably be used as an independent Lot for the construction of a single-family residence within the other limitations set forth herein, or if said remaining portion is to be utilized by the adjoining Lot owner to augment both larger properties (i.e., one on each side of the property being purchased in fractions.)

Section 5. "Easements" Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plat. No utility company, water district, political subdivision, or other authorized entity using the easement herein referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to shrubbery, trees, flowers or to other property of the owners situated within any such easements.

Section 6. "Noxious or Offensive Activities Prohibited" No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Properties, save and except Section 22 below.

Section 7. "Occupancy" No private dwelling house erected upon any Lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, except as herein required. Nor shall any building, when completed, be in any

manner occupied until made to comply with the approved plans, the requirements herein and all other covenants, conditions, reservations and restrictions herein set forth. No temporary structure shall be placed or erected upon any Lot either permanently or temporarily unless approved in writing by the Committee.

Section 8. **"Garbage Tanks, Equipment, Etc."** No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 9. **"Signs"** No signs of any character shall be allowed on any Lot except one sign of not more than six (6) square feet, advertising the property for sale or rent; provided, however, that Declarant shall have the right, during the construction and sale period, to construct and maintain such facilities as may be reasonably necessary for such construction and sale, including signs and storage areas, but not including a temporary residence or office, save and except Section 22 below.

Section 10. **"Animals"** No animals, livestock or poultry of any kind shall be raised, bred or maintained for any commercial purpose on any Lots, except that no more than two (2) dogs and two (2) cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.

Section 11. **"Fences, Walls, Hedges and Utility Meters"** No fence, wall, hedge or utility meter shall be placed or permitted to remain on any Lot closer to the streets adjoining such Lot that is permitted for the main residence on such Lots. No chain link fences shall be permitted. All fencing must be made of wood or masonry and shall be at least six (6) feet high and maintained according to the standards similar to all other fencing for Lots in the Subdivision. Additionally, see Article VII, Section 4.

Section 12. **"Trucks, Buses and Trailers"** No trucks larger than two ton, motor vehicles not currently licensed, boats, trailers, campers, construction trucks, motor or mobile homes or other vehicles shall be permitted to be parked on any Lot, except in a closed garage, or on any street for a period not to exceed one week. This restriction shall not apply to automobiles or small non-commercial passenger trucks in operable condition and regular usage, provided that such vehicles are parked on an improved driveway and not on the street in front of a Lot for a period not to exceed twelve (12) hours in any twenty-four (24) hour period. No vehicle shall ever be permitted to park on a driveway at a point where the vehicle obstructs pedestrians from use of a sidewalk.

Section 13. **"Sidewalks"** Builders of any homes in this Subdivision will be required to construct a sidewalk in compliance with the City of Edinburg specifications at the front of each Lot the entire width of the Lot.

Section 14. **"Prohibited Activities"** No professional, business or commercial activity to which the general public is invited shall be conducted on any Lot. No fence or wall shall be built in front of the front wall line of the respective building of any Lot. The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

Section 15. **"Utility Lines and Antennas"** All electrical service and telephone lines shall be placed underground. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any home site, which is visible from any street, or other Lot unless it's impossible to receive signals from said location. In that event, the receiving device may be placed in a visible location as approved by the Committee. The Declarant by promulgating this section is not attempting to violate the Telecommunications Act of 1996 (the "Act"), as it may be amended from time to time. This section shall be interpreted to be as restrictive as possible while not violating the Act.

Section 16. **"Garage"** All residences erected on the Subdivision Lots must have at least a two-car garage incorporated into the main structure. No carports are permitted.

Section 17. **"Residential Landscaping"** Front yards of all dwellings which are not composed of sidewalks, driveways or areas consisting of shrubs, hedges, ground covers and trees shall be covered by a grass, such as coastal Bermuda or Saint Augustine or other commercially approved lawn grass. Front yards shall be landscaped in a professional manner, with shrubs, hedges and/or ground covers and trees as per minimum requirement of the City of Edinburg. Each Owner shall maintain trees and shrubbery and keep them disease free and healthy, and if any such trees either die or become diseased or of unhealthy appearance they shall be removed and new trees shall be planted in their place. The cost of any such shrubbery or trees shall be paid for by the Owner.

No Owner shall allow his Lot or Lots, whether vacant or not, to remain overgrown with grass or weedy vegetation or natural wild vegetation, and each Owner shall be responsible for the timely maintenance, care and removal of grass, weedy or natural vegetation by mowing, shredding, cutting and removing the same. Additionally, the Committee or its agent(s) shall have the right at its option, to mow, shred or cut said vegetation, and to charge the Owner(s) a reasonable fee. In the event that said fee remains unpaid for a period of thirty (30) days, the Declarant, Committee or its agents shall have a valid and subsisting lien for said payment and said lien may be perfected by filing an affidavit establishing said lien in the real estate records of Hidalgo County, Texas, and may bring suit to enforce the payment of said fees or for foreclosure of its lien, or both, and shall be entitled to reasonable attorney's fees and costs of suit for prevailing in such an action.

All front yards are to be equipped with an automatic drip or sprinkler system to irrigate the front yard so as to keep all vegetation in the front yards of all Lots in good condition.

Section 18. **"Vehicle Maintenance"** No maintenance shall be allowed on any type of motorized vehicle on the streets of the Subdivision.

Section 19. **"Driveways"** Driveways must be constructed of concrete, brick, or other material receiving the approval of the Committee.

Section 20. **"Mail Boxes"** All mail boxes shall be of the same design and material as the structure and placed in uniform form.

Section 21. **"Insurance"** Nothing shall be done or kept on a Lot or on the Common Area which would increase the rate of insurance relating thereto without the prior written consent of the Association, and no Owner shall permit anything to be done or kept on his Lot or the Common Area which would result in the cancellation of insurance on any residence or on any part of the Common Areas, or which would be in violation of any law.

Section 22. **"Declarant's Special Rights"** Declarant or the transferees of Declarant shall undertake the work of developing all Lots including within the Subdivision. The completion of that work, and the sale, rental, or other disposal of Lots is essential to the establishment and welfare of the Subdivision as an ongoing residential community. In order that such work may be completed and the Subdivision be established as a fully occupied residential community as soon as possible, nothing in this declaration shall be understood or construed to:

(a) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of declarant or Declarant's transferees from doing on any part or parts of the Subdivision owned or controlled by Declarant or Declarant's transferees or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease or otherwise;

(b) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of declarant or Declarant's transferees from constructing and maintaining on any part or parts of the subdivision property owned or controlled by Declarant, Declarant's transferees, or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease or otherwise;

(c) Prevent declarant, Declarant's transferees or the employees, contractors or subcontractors of Declarant or Declarant's transferees from conducting on any part or parts of the Subdivision property owned or controlled by Declarant or Declarant's transferees or their representatives, the business of completing such work, of establishing the Subdivision as a residential community and of disposing of Lots by sale, lease or otherwise; or

(d) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from maintaining such sign or signs on any of the Lots owned or controlled by any of them as may be necessary in connection with the sale, lease or otherwise of Subdivision Lots.

As used in this section, the words "its transferees" specifically exclude purchasers of Lots.

ARTICLE VI

OWNERS' OBLIGATION TO REPAIR

Each Owner shall, at its sole cost and expense, repair its residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

ARTICLE VII

OWNERS' OBLIGATION TO REBUILD

If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence to rebuild, repair or reconstruct such commercial building in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurs, and shall be completed within fourteen (14) months after damage occurs, unless prevented by causes beyond the control of the Owner or Owners. All plans for rebuilding must be approved by the Committee.

ARTICLE VIII.

ARCHITECTURAL CONTROL

Section 1. "Architectural Control Committee" Declarant shall designate and appoint the initial Architectural control Committee ("Committee") consisting of two (2) adult persons, those being Jaime A. Rodriguez and Sameer Saxena, which Committee shall serve until December 31, 2008. If any member becomes unable or unwilling to continue to serve during such term, Declarant, his successor or assigns, shall appoint a successor or assigns, shall appoint a successor to finish the respective term. A majority of the votes of the Committee may designate a representative to act for it. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. After December 31, 2008, the duties, rights, powers and authority of the Committee shall automatically transfer, without any further formality, to the Association. Further, any or all of the duties, rights, powers and authority of the Committee may be assigned at any time, upon the unanimous decision of the Committee, to the Association. From and after the date of such

assignment, the Association shall have full right, authority and power, and shall be obligated to perform the functions of the committee as provided therein.

Section 2. "Function" the Committee shall perform the functions provided for and consistent with the provisions of this Declaration.

Section 3. "Powers" The Committee shall have and exercise the powers and rights provided for in and consistent with the provisions of this Declaration. Except in those instances in this Declaration where the unanimous action of all Committee Members is required for the Committee to make a decision or take an action, no action shall be taken or any decisions made by the Committee except with the concurrence of not less than three (3) votes. Each Committee Member shall be entitled to receive (but may waive) not less than five (5) days written notice of each meeting of the Committee and of each action proposed to be taken and decision proposed to be made by the Committee (whether or not at a meeting). The Committee may adopt such by laws to govern the performance of its functions under this Declaration as the Committee Members may deem appropriate, provided that no provision of such Bylaws shall be contrary to any provision of this Declaration.

Section 4. "Approval of Plans and Specifications" No building, fence, wall, road, driveway or other structure shall be commenced, erected, altered or maintained upon the Properties, nor shall any exterior addition to, or change or alteration therein, be made, nor shall any landscaping of any property be undertaken, except as set forth below, until samples of the exterior paint and roofing materials, and the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to, and approved in writing by, the Committee as to the harmony of external design and location of such improvements in relation the surrounding structures and topography.

Section 5. "Failure of Committee to Act" In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and such Committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, approval by the Committee shall not be required, and full compliance with the Article shall be deemed to have been had.

Section 6. "Failure to Comply" Failure to comply with Section 4 and/or 5 herein shall submit the respective Lot Owner to injunctive relief and/or damages pursuant to Article II, Section 4. The defendant Lot Owner shall pay all costs of court and attorney's fees borne by the Association or other entity bringing such action should the Association or other entity as the case may prevail.

ARTICLE IX.
GENERAL PROVISIONS

Section 1. **"Enforcement"** Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easement, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration. Failure by Declarant, the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. **"Severability"** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

Section 3. **"Amendments"**

- (a) **Declarant.** So long as the Class B membership exists, the Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time as otherwise specifically authorized by this Declaration, or if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which is in conflict therewith, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Property, or (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to enable it to make, purchase, insure or guarantee mortgage loans on any portion of the Property. Further, so long as it still owns any portion of the Property for development, the Declarant may unilaterally amend for other purposes, provided the amendment has no material adverse effect upon any right of any Owner.
- (b) **Owners.** Except as otherwise specifically provided above, or elsewhere in this Declaration, this Declaration may be amended only by a majority vote of Class A Members, together with the Class B Member's vote, for so long as the Class B Membership shall exist. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed number of affirmative votes required for action to be taken under the clause. No amendment may remove, revoke, or modify any right or privilege of Declarant without the consent of Declarant or its assignee of such right or privilege.
- (c) **Validity and Effective Date of Amendments.** Amendments to this Declaration shall become effective upon recordation in the real property records of Hidalgo County, Texas unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate as a waiver or amendment of any provision of this Declaration.

Section 4. **"Subordination"** No breach of any of the conditions herein contained or re-entry by reason of such breach shall defeat or render invalid the lien of any mortgage made in good faith and for value as to the subdivision or any Lot therein; provided, however, that such conditions shall be binding on any owner whose title is acquired by foreclosure, trustee's sale or otherwise.

Section 5. **"Duration"** The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, Association, or any member thereof for a period of thirty (30) years from the date hereof, and thereafter shall continue automatically in effect for additional periods of ten (10) years unless otherwise agreed to in writing by the then owners of all of the Lots.

Section 6. **"Compliance with Laws"** At all times, each Owner shall comply with applicable federal, state, county, and municipal laws, ordinances, rules and regulations with respect to the use, occupancy, and condition of their Lot and any improvements thereon. If any provision contained in this Declaration or amendment is found to violate any law, then the provision shall be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by law.

EXECUTED this 7th day of FEBRUARY, ²⁰⁰⁷~~2006~~. JS

J.Q.S. INVESTMENTS, L.P., a Texas Limited Partnership

By its sole general partner: J.Q.S. Management, L.L.C., a Texas Limited Liability Company

Sameer Saxena
By: Sameer Saxena, Managing Member

EXECUTED by Sameer Saxena, this 7 day of Feb, 2007^{BS}, for purposes of evidencing its consent to the covenants and restrictions herein set forth, to the extent concurrently holds a lien on the properties covered by the terms of this Agreement.

ATTEST:

By: _____

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

This instrument was acknowledged before me on the 7 day of Feb 2007, by Sameer Saxena, Managing Member of J.Q.S. Management, L.L.C., a Texas Limited Liability Corporation the sole general partner of J.Q.S. INVESTMENTS, L.P., a Texas Limited Partnership, on behalf of said partnership.



Notary Public, State of Texas

Brenda L. Garza

