

4462 1687

This I certify that this is a true and  
correct of the document it purports to be,  
FAIR LAND TITLE COMPANY

BY 

After recording, return to:  
Hexter-Fair Title Company  
5160 Village Creek Drive, #200  
Plano, TX 75093

99- 0091224

**DECLARATION OF COVENANTS,**

**CONDITIONS AND RESTRICTIONS**

**FOR THE VILLAGES OF PRESTON GLEN**

**CITY OF PLANO**

**COLLIN COUNTY, TEXAS**

**JUNE 23, 1999**

4462 1688

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE 1</b>	
Section 1.1 <u>Establishment of Covenants, Conditions and Restrictions</u>	1
Section 1.2 <u>Definitions</u>	1
<b>ARTICLE 2</b>	
Section 2.1 <u>Permitted Uses</u>	3
Section 2.2 <u>Prohibited Uses and Activities</u>	3
<b>ARTICLE 3</b>	
Section 3.1 <u>Plan Approval Required</u>	5
Section 3.2 <u>Establishment of ACC</u>	5
Section 3.3 <u>Approval Process</u>	5
Section 3.4 <u>Specific Construction Provisions</u>	6
Section 3.5 <u>Construction Materials</u>	7
Section 3.6 <u>Height Restrictions</u>	8
Section 3.7 <u>Roof Restrictions</u>	8
Section 3.8 <u>Construction Period and Process</u>	8
Section 3.9 <u>Declarant Rights</u>	8
<b>ARTICLE 4</b>	
Section 4.1 <u>Owner's Obligation to Maintain</u>	8
Section 4.2 <u>Damaged Improvements</u>	9
Section 4.3 <u>Declarant/Association Right to Perform</u>	9
<b>ARTICLE 5</b>	
Section 5.1 <u>Establishment</u>	9
Section 5.2 <u>Voting Power</u>	9
Section 5.3 <u>Officers</u>	10
<b>ARTICLE 6</b>	
Section 6.1 <u>Power to Establish Assessments</u>	11
Section 6.2 <u>Commencement of Assessments</u>	11
Section 6.3 <u>Regular Annual Maintenance Assessments</u>	11
Section 6.4 <u>Special Assessments</u>	12
Section 6.5 <u>Liability for and Enforcement of Assessments</u>	12
Section 6.6 <u>Working Capital Contribution</u>	13
<b>ARTICLE 7</b>	
Section 7.1 <u>Right to Use Common Areas</u>	13
Section 7.2 <u>Specific Facilities</u>	13
Section 7.3 <u>Maintenance of Common Areas</u>	14
Section 7.4 <u>Risk of Loss - Use of Common Areas</u>	14
Section 7.5 <u>Conveyance of Common Area to Association</u>	14
<b>ARTICLE 8</b>	
Section 8.1 <u>Rights to Annex</u>	14
Section 8.2 <u>Specific Declarant Rights to Amend Declaration</u>	14
Section 8.3 <u>Easement/Access Right</u>	14
Section 8.4 <u>Assignment of Declarant Rights</u>	15
Section 8.5 <u>Declarant's Right to Install Fences, Sprinkler Systems, and other Improvements in Set Back Areas</u>	15
Section 8.6 <u>Replating or Modification of Plat</u>	15
Section 8.7 <u>Limitation of Declarant Liability</u>	15
<b>ARTICLE 9</b>	
Section 9.1 <u>Term and Renewal</u>	15
Section 9.2 <u>Enforcement</u>	15
Section 9.3 <u>General Easement for Encroachments, Access, Maintenance and Utilities</u>	16

4462 1689

Section 9.4	<u>Amendment of Declaration</u>	
Section 9.5	<u>City Provisions</u>	
Section 9.6	<u>Notices</u>	16
Section 9.7	<u>Severability</u>	16
Section 9.8	<u>Binding Effect</u>	16
		16

16  
16  
16  
16

4462 1690

**LIST OF DEFINED TERMS**

	<b>Page</b>
ACC .....	1
Assessment Lien .....	12
Assessments .....	1
Association.....	2
Board.....	2
City.....	2
Common Area.....	2
Covenants.....	1
Declarant .....	2
Declarant .....	1
HUD.....	2
Lot.....	2
Maintenance Assessment .....	11
Owner.....	2
Person.....	2
Plat .....	2
Residence .....	2
Special Assessments .....	12
Structure.....	2
VA.....	2
Vehicle .....	2

4462 1691

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR VILLAGES OF PRESTON GLEN**

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

KNOW BY ALL THESE PRESENT:

This Declaration is executed effective as of June 1999 by DALWESTERN II, L. P. ("Declarant").

**RECITALS:**

A. Declarant is the owner of the real property in Collin County, Texas described *in the Plat (defined below)*, which Declarant is developing as an addition to the City of Plano to be known as Villages of Preston Glen (the "Property").

B. Declarant desires to establish a planned residential community of single family detached homes on the Property and, accordingly, has executed this declaration to impose the covenants, conditions, restrictions, and easements herein described upon the Property.

**ARTICLE 1  
ESTABLISHMENT**

Section 1.1 **Establishment of Covenants, Conditions and Restrictions.**  
Declarant hereby imposes upon the Property the covenants, conditions, restrictions, and easements set forth in this Declaration (the "Covenants") for the purposes of establishing a general scheme for development of the Property, enhancing the value of the Lots and Residences (defined below), and establishing restrictions for residential use for the benefit of Declarant and the Owners (defined below). The Covenants touch and concern title to the Property and shall be binding upon all persons hereafter acquiring any portion of the Property.

Section 1.2 **Definitions.** The terms set forth below shall have indicated meanings when used in this Agreement; other terms are defined elsewhere in this Agreement and shall have the meaning given to them in this Declaration.

"ACC" means the architectural control committee established pursuant to this Declaration.

"Assessments" means the Maintenance Assessments and Special Assessments provided for in Article 6.

"Association" means the Villages of Preston Glen Homeowners Association, Inc.,

4462 1692

a Texas non-profit corporation established as provided in this Declaration.

**"Board"** means the Board of Directors of the Association.

**"City"** means the City of Plano, Texas.

**"Common Area"** means those portions of the Property as described in the Plat that do not constitute Lots or streets, roads, or alleys. Accordingly, the Common Area includes the recreation center, the landscape and maintenance easements, and wall maintenance easements reflected on the Plat. The Common Area also includes all improvements on or to such portions of the Property.

**"Declarant"** means Dalwestern II, L. P. and any other person who is designated as a successor Declarant in writing pursuant to the provisions of this Declaration.

**"HUD"** means the U.S. Department of Housing and Urban Development.

**"Lot"** means any of the individual platted building lots reflected on the Plat that are to be used for residential purposes as herein described.

**"Owner"** means any Person owning fee title to any Lot, but excluding any mortgagee or beneficiary under a deed of trust until such time as it acquires legal title to a Lot.

**"Person"** means any individual, corporation, limited liability company, partnership or other entity of any kind or type whatsoever.

**"Plat"** means (i) initially, the Preliminary Plat of Villages of Preston Glen dated August 1998 prepared by GBW Engineers, Inc., (ii) after its recordation, the final Plat for Villages of Preston Glen to be recorded in the Map Records of Collin County, Texas, and (iii) any replat of or amendment to the foregoing made by Declarant in accordance with this Declaration.

**"Residence"** means a single family detached residence constructed upon a Lot in conformance with this Declaration.

**"Structure"** means any structure (other than a Residence), fence, driveway, sidewalk, planting, landscaping, sprinkler system, wall, tennis court, swimming pool, outbuilding, play ground equipment, or other improvement of any kind or type.

**"VA"** means the U.S. Department of Veterans Affairs.

**"Vehicle"** means any vehicle of any kind or type whatsoever, including any automobile, truck, motorcycle, boat, mobile home, motor home, boat trailer, or other kind of trailer.

4462 1693

**ARTICLE 2**  
**USE PROVISIONS**

Section 2.1 **Permitted Uses.**

(a) **Lots Limited to Residential Use.** Except as otherwise provided in this Declaration, Lots shall be used only for single family, private residential purposes and activities reasonably related thereto.

(b) **Common Area Uses.** The Common Area designated as the recreational center on the Plat shall be used only for recreational and other similar purposes as approved by the Declarant or the Association. The Common Area consisting of landscaping, maintenance, and wall maintenance easements shall be used for such purposes or similar purposes as approved by the Declarant or the Association.

(c) **Sales Offices and Similar Uses.** Declarant may maintain one or more sales offices or trailers on Lots for the purpose of facilitating sales of Residences on the Property. Declarant or the ACC may also grant the right to maintain construction trailers on the Lots and to use Lots for sales offices and similar purposes to other Persons constructing Residences on the Property by written designation.

Section 2.2 **Prohibited Uses and Activities.**

(a) **No Further Subdivision.** No Lot may be further subdivided without the written consent of the Declarant or the ACC. Lots may be combined for the purpose of constructing a single residence on more than one Lot only upon written approval of the Declarant or the ACC. Without regard to any such permitted subdivision or combination, the Lots involved shall continue to be treated as single individual Lots hereunder for all other purposes, including voting in the Association and assessing and collecting Assessments.

(b) **Parking and Vehicle Restrictions.** All Vehicles shall be parked, stored or placed so as not to be visible from any street or from ground level view from an adjoining Lot, except for temporary parking in the driveway constructed on a Lot. On-street parking shall be limited to temporary parking of guests or invitees of Owners during parties, delivery of services, and similar limited (no more than twelve (12) hours) time periods. Trucks with tonnage in excess of one ton and Vehicles with signage or advertising displays shall not be permitted to repetitively park overnight on the streets, driveways, or other areas within the Property. No Vehicle which transports inflammatory or explosive cargo may be parked or stored within the Property. No inoperative or unlicensed Vehicles may be parked or stored, other than in an enclosed garage, within the Property. All work on Vehicles (other than routine maintenance) shall be performed only in an enclosed garage. The foregoing provisions shall not restrict the parking of trucks and other Vehicles as necessary in connection with construction of Residences or other Structures on Lots.

(c) **Specific Use Restrictions.** The Property is restricted solely to residential and related uses; accordingly, no industrial, business, commercial, professional, manufacturing,

4462 1694

mineral or other similar use shall be permitted on any part of the Property. This Section shall not be construed so as to prohibit the conduct of a reasonable amount of in-home work, such as computer work or similar activities, provided that such work or activity does not involve the parking of Vehicles of employees, consultants, or other parties other than the occupants of the Residences in question, and does not involve the delivery or pick-up of any materials or services. No church may be maintained on the Property.

(d) **Pet and Animal Restrictions.** Only regular household pets such as cats and dogs shall be permitted on the Property and then only for personal use and not for any business use such as breeding, kennel operations and the like. No other animals shall be permitted to be maintained upon the Property, including the following: cows, horses, bees, hogs, sheep, goats, poultry, or skunks. No more than four (4) domesticated household pets are permitted in any Residence. All pets shall be kept within the fenced-in area of an owner's Lot and shall not be permitted to run free through the Property.

(e) **Outdoor Burning Restrictions.** Outdoor burning of trash, leaves, and other items is prohibited. This restriction shall not be construed as prohibiting outdoor cooking on barbeque grills in connection with use of a Residence.

(f) **Trash/Garbage Disposal.** Trash, garbage and other waste shall at all times be kept in clean, well maintained, sanitary containers for regular scheduled pickup for removal of such items. Trash, garbage or other waste shall not be dumped on the ground of any Lot or in any Common Area.

(g) **Occupancy.** Each Lot shall be improved with a single family detached Residence. No Person shall occupy any garage or other outbuilding at any time.

(h) **Projections from Structures.** Window air conditioning units and other similar projections are prohibited. Any projection through the roof of any structure on the Property shall require the prior written approval of the Declarant or the ACC.

(i) **Private Water/Sewer Systems.** Each Resident shall be connected to the City water and sanitary sewer system, and no private water well, water system or sewer system is permitted within the Property.

(j) **Changes in Grade.** Except for such changes as are reasonably necessary to facilitate construction of a Residence on a Lot, no Owner shall change the grade of any Lot except in compliance with all applicable laws.

(k) **Visible Activities - Outdoors.** Outdoor drying of clothes is prohibited. Lawn mowers, rakes, carts, and other yard equipment shall be stored from view from adjoining Lots and streets when not in use.

(l) **General Restriction - Nuisances.** In general, no Lot shall be used for any purpose that would constitute a public or private nuisance or that would unreasonably disturb any other Owner in the use and enjoyment of its Lot.



4462 1695

**ARTICLE 3**  
**CONSTRUCTION PROVISIONS**

Section 3.1 **Plan Approval Required.** No Residence or Structure shall be constructed within the Property until the plans therefor have been approved by the ACC or Declarant as provided in this Article 3.

Section 3.2 **Establishment of ACC.**

(a) **Initial Appointment.** The ACC shall consist of three (3) members: the initial members of the ACC shall be appointed by the Declarant.

(b) **Term and Subsequent Appointments.** The members of the ACC shall serve until they resign or are removed by the party appointing them to the ACC (which the appointing party may do at any time). Subsequent appointments to the ACC shall be made by the Declarant until such time as the Declarant either relinquishes such power by written notice to the Board, or the Declarant no longer owns any Lot; thereafter appointments to and removals from the ACC shall be made by the Board.

(c) **Compensation; Fee for Review.** No member of the ACC shall be entitled to compensation for its services. The ACC may impose a reasonable charge for reviewing plans to defray costs and expenses incurred in doing so.

Section 3.3 **Approval Process.**

(a) **Submission of Plans.** Any party wishing to construct a Residence or any Structure on the Property shall submit two (2) copies of complete plans and specifications therefor to the ACC for its approval prior to commencing construction. Such plans and specifications shall include engineering information, landscaping description, and construction plans showing the location and elevations of the proposed Residence or Structure and the materials to be used in constructing the same, all in sufficient detail to enable the ACC to evaluate the proposed Structure or Residence. The ACC may request additional information, including samples of proposed materials to aid it in its decision process. After receipt of a complete set of plans and specifications, the ACC shall promptly review the same and notify the Person submitting whether it approves the plans or whether it requires changes thereto. Alternately, the ACC may disapprove a set of plans by so noting thereon and returning it to the Person submitting, accompanied by a statement of the reasons for disapproval. No construction shall be commenced on any portion of the Property unless and until the plans for the Residence or Structure in question have been approved by the ACC or Declarant.

(b) **Time for Review/Approval.** The ACC shall approve or disapprove all plans submitted for construction within thirty (30) days after the date it receives a complete set of plans and specifications therefor; if the ACC fails to specifically approve or disapprove of any plans within such thirty (30) day period, then the ACC shall be deemed to have approved the

4462 1696

plans submitted.

(c) **Review Standards.** The ACC, in reviewing and approving plans for construction of Structures or Residences, shall use commercially reasonable efforts to promote and ensure a high level of taste, design quality, aesthetic harmony, and conformity throughout the Property, consistent with the standards established by this Declaration.

(d) **Guidelines/Building Standards.** The Declarant or the ACC may, from time to time, establish specific guidelines and building standards to assist Persons in determining the type of Structures and Residences which may be constructed on the Property. The ACC or Declarant may amend or modify such guidelines or standards from time to time in its sole discretion. Such guidelines or standards shall be general guides to permitted construction within the Property, but shall not diminish the authority of the ACC and Declarant to approve plans as otherwise herein provided.

(e) **No Liability for Plan Review.** No member of the ACC or the Declarant shall have any liability arising out of or with respect to the review and approval of plans as contemplated by this Declaration. No approval of any plans by either the ACC or the Declarant shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation, it being the responsibility of the Person submitting any plans to assure compliance with all applicable laws. Declarant and members of the ACC shall have no liability for decisions made by them regarding the approval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious.

Section 3.4 **Specific Construction Provisions.**

(a) **Setbacks.** All Residences and other Structures shall be constructed in conformity with the setback requirements of the City and the building lines reflected on the Plat.

(b) **Structure Size and Type.** Each Residence shall have a minimum area of 1,200 square feet of enclosed air conditioned area. Each Residence shall be of new construction on a Lot and no mobile homes or manufactured housing shall be permitted on the Property except on a temporary basis in connection with construction activities.

(c) **Garage Requirements.** Each Residence shall have at least a two car attached garage constructed as a part thereof.

(d) **Drive/Walkway Requirements.** All driveways and sidewalks shall conform to applicable City and other governmental specifications and regulations.

(e) **Ancillary Structure Provisions.** All ancillary Structures (as described below) shall conform to the requirements of this Section:

(1) **antennae/satellite dishes** - antennas for UHF and VHF television reception and satellite dishes having a diameter of one (1) meter or less shall be screened from view to the greatest extent possible so long as an acceptable quality signal may still

4462 1697

be received. All other antenna, discs or other equipment for receiving or sending sound or video messages are not allowed on the Property unless inside the attic of the main residential structure or, with written permission of the Committee, one (1) satellite dish with a diameter in excess of one (1) meter may be placed in the backyard so long as it is completely screened from view from any street, alley, park or other public area. Amateur radio antennas, towers or masts, either for transmitting and/or receiving, shall not be permitted on the Property.

(2) fences and walls - all fences and walls shall be at least six feet (6'0") in height and shall have a maximum height of eight feet (8'0"), and shall be located in an area approved by the ACC.

(3) outbuildings - outbuildings shall not extend above ten feet (10'0") in height, unless otherwise approved by the ACC, and shall be located in an area approved by the ACC.

(4) trash containers - all trash containers shall be screened from view from adjacent Lots and streets.

(5) hedges - hedges may be maintained with the prior approval of the ACC. Height of all hedges shall be in conformity with height of fences and walls, and no hedge shall be maintained in a manner that obstructs any sidewalk or the visibility of intersections of streets.

(6) servant's quarters - servant's quarters may be constructed, provided the plans therefor are approved by the ACC as herein provided.

(7) retaining walls - retaining walls require prior approval as to location, construction, and materials by the ACC.

(8) mailboxes - mailboxes shall be of a design and constructed of materials approved by the ACC and shall conform with United States Postal Service regulations.

(9) tennis court/swimming pool/recreational facilities - may be constructed within any Lot provided the plans therefor are approved by the ACC.

(10) signage - no signage may be maintained on any Lot or in the Common Area other than signs of a reasonable size (not to exceed 2'x3') and of tasteful design advertising a Lot or Residence for sale or rent, and such advertising signs shall be subject to approval of the ACC. The ACC may, without notice, remove any non-complying sign from the Property.

Section 3.5 Construction Materials. All construction materials shall conform

4452 1698

to the following provisions:

(a) **Exterior Materials.** All exterior construction materials shall be subject to approval by the ACC as to aesthetic appearance and shall conform to the following requirements of the city.

(b) **Roof Materials.** Minimum twenty (20) year warranty roof or equivalent is required that is Weather Wood, Oxford Grey or similar colors. All roofing materials must be fireproof and conform to City requirements, and are subject to ACC approval.

Section 3.6 **Height Restrictions.** All Structures shall conform to the height restrictions of the City.

Section 3.7 **Roof Restrictions.** All roofs shall have at least a six (6) foot to twelve (12) foot pitch on the main structure and on garage structures unless otherwise approved by the ACC.

Section 3.8 **Construction Period and Process.** Construction of any Residence shall be pursued with all due diligence and, in any event, shall be completed within nine (9) months after commencement. Construction of any other Structure shall be completed within the time periods specified in the plan approval process. All areas under construction shall be maintained in a clean, safe condition, and debris, trash, and rubble shall be stored in appropriate containers and promptly removed from the Property.

(a) **Landscaping.** All Lots shall be appropriately landscaped, including planting of grass and other plants in conformity with other improvements on the Property.

(b) **Right to Waive or Modify Specific Instruction Provisions.** The ACC shall have the right, in its discretion, to grant reasonable waivers of the construction provisions set forth in this Declaration, and any such waiver shall not entitle any other person to a similar waiver.

Section 3.9 **Declarant Rights.** So long as Declarant owns any Lot, Declarant may exercise any of the rights of the ACC under this Article 3.

#### ARTICLE 4 **MAINTENANCE PROVISIONS**

Section 4.1 **Owner's Obligation to Maintain.** Each Owner shall maintain its Lot and the Residence and other Structures thereon in a clean, first class condition. Each Owner shall regularly mow grass and maintain the landscaping on its Lot in good condition at all times. Each Owner shall maintain the exterior of all Residences and Structures in good condition and shall make such repairs and replacements as necessary to maintain good order and the aesthetic

4462 1699

harmony of the Property.

Section 4.2 **Damaged Improvements.** If any Residence or Structure is damaged in any way, the Owner shall immediately repair such damage or, in the case of substantial damage when the Owner does not wish to rebuild, raze the damaged Structure or Residence and remove the same and leave the surface of the Lot in good order.

Section 4.3 **Declarant/Association Right to Perform.** If any Owner fails to maintain the condition of its Lot, the landscaping thereon, or the Residence or other Structures thereon as contemplated by this Article 4 and fails to take action to correct such defect within ten (10) days after receiving written notice thereof from the Declarant or the Association, then the Declarant or Association may perform those duties which the Owner failed to perform and the costs of so performing shall be a debt owed from the Owner to the Declarant or Association, as applicable, which shall bear interest at the rate of eighteen percent (18%) per annum (but not in excess of the lawful maximum rate), be payable upon demand, and shall be secured by the lien provided for in Article 6.

#### **ARTICLE 5 OWNER'S ASSOCIATION**

Section 5.1 **Establishment.** The Association has heretofore been or will hereafter be created as a Texas non-profit corporation. Each Owner of a Lot shall be a member in the Association and such membership is appurtenant to and shall not be separated from ownership of a Lot. Upon the transfer of a Lot, the new Owner shall automatically become a member of the Association. The term of existence of the Association and other matters pertaining to its operation are set forth in the Articles of Incorporation and the Bylaws of the Association, copies of which may be obtained from Declarant or the Association. The Association is established to enforce this Declaration and the Covenants, to promote the interests of the Owners as residents of the Property, and to enhance the value of the Lots as a part of a harmonious, high quality, residential subdivision.

Section 5.2 **Voting Power.** The Association shall have two classes of voting membership as follows:

(a) **Class A.** The Class A Member shall be all members other than Declarant and shall be entitled to one vote for each Lot owned. If more than one person owns an interest in a Lot, they shall combine their vote in such way as they see fit, but there shall be no fractional votes, and no more than one vote with respect to any Lot.

(b) **Class B.** The Class B Member shall be the Declarant who shall be entitled to ten (10) votes for each Lot owned by Declarant. The Class B membership shall be converted to Class A membership upon the earlier of (i) the total votes outstanding in the Class A membership equalling the total votes outstanding in the Class B membership, or (ii) 10 years from date of CC&Rs.

4462 1700

(c) **Board of Directors Election.** The Board shall be elected as provided in the articles and bylaws of the Association. The Board shall act by majority vote as provided in the bylaws.

(d) **Specific Powers of Board.** Without limiting the authority granted to a board of directors under the Texas Non-Profit Corporation Act, the Board shall have the following specific powers on behalf of the Association:

- (1) to enforce the provisions of this Declaration;
- (2) to enter into contracts;
- (3) to retain third parties, as necessary, to assist the Board in carrying on the Association's activities, including engineers, accountants, lawyers, architects, land planners, professional management, and other consultants;
- (4) to take such action as necessary to maintain the Common Area in good order and condition;
- (5) to acquire property, services and materials to carry out its duties;
- (6) to purchase insurance covering potential liability for use of the Common Area and for other risks;
- (7) to borrow money for Association purposes;
- (8) to initiate and defend litigation, arbitration and other similar proceedings;
- (9) to promulgate reasonable rules and regulations for access to and use of Common Areas; and
- (10) to establish and collect reasonable fees for the use of any recreational facilities on the Common Area.

Section 5.3 **Officers.** The Association will have such officers as are set forth in the bylaws.

Section 5.4 **Dissolution.** The Association may be dissolved upon the vote of Owners owning at least seventy percent (70%) of the Lots. Upon such dissolution, the assets of the Association shall be donated to a nonprofit organization with purposes similar to the Association and selected by a majority of the Board. So long as the Class B membership provided for in Section 5.2(b) exists, dissolution of the Association shall require the prior written approval of HUD or VA.

4462 1701

**ARTICLE 6**  
**ASSESSMENTS**

Section 6.1 **Power to Establish Assessments.** The Association is empowered to establish and collect Assessments as provided in this Article 6 for the purpose of obtaining funds to maintain the Common Area, perform its other duties, and otherwise preserve and further the operation of the Property as a first quality residential subdivision. The purposes for which Assessments may be used include, without limitation, maintaining, operating, managing, repairing, replacing or improving the Common Area or any improvements thereon; mowing grass and maintaining grades and signs; paying legal fees and expenses incurred in enforcing this Declaration; paying expenses incurred in collecting and administering assessments; paying insurance premiums for liability and fidelity coverage for the ACC, the Board and the Association; and satisfying any indemnity obligation under the articles or bylaws.

Section 6.2 **Commencement of Assessments.**

(a) **Owner other than Declarant.** The Assessments shall commence as to each Lot upon its conveyance by Declarant to any Person that is not an affiliate of Declarant or Declarant by Assignment according to Section 8.4.

(b) **Declarant.** Declarant shall not be liable for Assessments for any Lots it owns. Declarant may, but shall have no obligation to, subsidize the Association from time to time.

Section 6.3 **Regular Annual Maintenance Assessments.**

(a) **Annual Budget.** For each calendar year or a part thereof during the term of this Declaration, the Board shall establish an estimated budget of the expenses to be incurred by the Association for the forthcoming year in performing its duties. Based upon such budget, the Association shall then assess each Lot an annual fee (the "**Maintenance Assessment**") which shall be paid by each Owner in advance as follows: *annually, on the 15<sup>th</sup> of each January* unless the Board determines a different schedule. The Association shall notify each Owner of the Maintenance Assessment for the ensuing year by December 15 of the preceding year, but failure to give such notice shall not relieve any Owner from its obligation to pay Maintenance Assessments. Any Maintenance Assessment not paid within thirty (30) days of the date due shall be delinquent and shall thereafter bear interest as provided in Section 6.5(f). As to any partial year, Maintenance Assessments on any Lot shall be appropriately prorated.

(b) **Limits on Maintenance Assessments.** The initial Maintenance Assessment for each Lot shall not exceed \$20 per month. Thereafter the Board may increase the Maintenance Assessment annually to meet the anticipated needs of the appropriate budget, but the Maintenance Assessment may not be increased in any year by an amount in excess of twenty percent (20%) above the previous year's Maintenance Assessment, unless such increase is approved by a majority vote of each class of members of the Association.

(c) **Uniform Assessments.** Maintenance Assessments for all Lots shall be

4462 1702

uniform.

Section 6.4 Special Assessments. The Association may impose special assessments ("Special Assessments") to make capital improvements to the Common Area, to satisfy its indemnity obligations under the articles or bylaws, or for other similar purposes. Any Special Assessment proposed by the Association must be approved by a majority of the votes of each class of the members of the Association prior to its imposition. At least fifteen (15) days prior to any meeting of the Association called to consider any Special Assessment, the Board shall notify each Owner thereof by written notice specifying the total amount of the Special Assessment required, the amount thereof imposed on each Lot (which shall be uniform), the purpose for such Special Assessment, and the time and method of payment thereof. The time for paying any Special Assessment (which may be in installments) shall be as specified in the approved proposal therefor.

Section 6.5 Liability for and Enforcement of Assessments.

(a) Personal Liability. Each Owner shall be personally liable for all Assessments imposed during the time it owns a Lot.

(b) Reservation, Subordination, and Enforcement of Assessment Lien. Declarant hereby reserves for the benefit of itself and the Association, a lien (the "Assessment Lien") against each Lot to secure payment of (1) the Assessments imposed hereunder and (2) payment of any amounts expended by Declarant or the Association in performing a defaulting Owner's obligations as provided for in Section 4.3. Each Owner, by accepting conveyance of a Lot, shall be deemed to have agreed to pay the Assessments herein provided for and to the reservation of the Assessment Lien. The Assessment Lien shall be subordinate to the liens of any valid first lien mortgage or deed of trust encumbering a particular Lot. The Assessment Lien may be non-judicially foreclosed by power of sale, which is hereby reserved, in accordance with the provisions of Section 51.002 of the *Texas Property Code* (or any successor provision) or may be enforced judicially. The Board is empowered to appoint a trustee, who may be a member of the Board, to exercise the powers of the Association to non-judicially foreclose the Assessments Lien in the manner provided for in Section 51.002 of the *Texas Property Code* (or any successor statute).

(c) Notices of Delinquency or Payment. The Association or Declarant may file notice of any delinquency in payment of any Assessment in the Real Property Records of Collin County, Texas. Upon request of any Owner or any Owner's mortgagee, the Board may also issue certificates evidencing the status of payments of Assessments as to any particular Lot (i.e., whether they are current or delinquent and if delinquent, the amount thereof). The Association may impose a reasonable fee for furnishing such statements.

(d) Suit to Recover. The Association may file suit to recover any unpaid Assessment and, in addition to collecting such Assessment and interest thereon, may also recover all expenses reasonably expended in enforcing such obligation, including reasonable attorneys' fees and court costs.



4462 1703

(c) **Fine for Continued Delinquency.** If any Owner is delinquent in paying its Assessments more than once in any twelve month period, then in addition to the other powers herein granted, the Board may impose a fine not to exceed \$500 for each delinquent payment, which shall be part of the delinquent Assessment and shall be payable and secured in the same manner as herein provided with regard to Assessments.

(f) **Interest on Past Due Amounts.** All Assessments past due more than thirty (30) days, unpaid fines as provided for above, and other amounts owed to the Association by any Owner which are not paid when due shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum, but not in excess of the maximum rate allowed by applicable law.

(g) **Suspension of Right to Use Common Area.** In addition to the other powers herein granted, the Board may suspend the right of Owner to use any of the Common Area during the time that such Owner is delinquent in paying any Assessment.

(h) **Suspension of Voting Rights.** No Owner who is delinquent in paying its Assessments shall have the right to vote as a member of the Association while such delinquency continues; an Owner may cure a delinquency at a meeting to regain the right to vote by paying all outstanding amounts (including interest and penalties) by cashier's or certified check or other good funds acceptable to the Board.

Section 6.6 **Working Capital Contribution.** Upon acquisition of record title to a Lot by the first owner other than the Declarant or a Builder, and for each subsequent sale thereafter, a contribution shall be made by or on behalf of the Purchaser to the working capital of the Association in an amount equal to One Hundred Dollars (\$100.00). This amount shall be in addition to, not in lieu of, the regular annual assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws. Declarant may not use the working capital fund to defray any of its expenses, reserve contributions or construction costs or make up any budget deficits.

## **ARTICLE 7** **COMMON AREA**

Section 7.1 **Right to Use Common Areas.** Each Owner, the members of that Owner's immediate family and the Owner's guests (provided guests are accompanied by an Owner) shall have the right to use the Common Area for its intended purposes as herein provided. The Declarant and the Association shall have the right to enter on and use the Common Areas at all times to exercise their rights or (in the case of the Association) perform its duties hereunder.

Section 7.2 **Specific Facilities.** Specific facilities located in the Common Area may include the following: landscape, irrigation, entry features, signage, screening walls, etc.

4462 1704

The Declarant and the Board may promulgate reasonable rules and regulations for use of these areas.

Section 7.3 Maintenance of Common Areas. The Association shall be solely responsible for all maintenance, repair, replacement, and improvement of the Common Areas, utilizing the Assessments for such purposes as herein provided. Declarant shall have no responsibility for maintenance, repair, replacement, or improvement of the Common Area after initial construction.

Section 7.4 Risk of Loss - Use of Common Areas. Each Owner shall be individually responsible and assume all risk of loss associated with its use of the Common Area and use by its family members and guests. Neither the Association nor Declarant shall have any liability to any Owner or their family members or guests, or to any other Person, arising out of or in connection with the use, in any manner whatsoever, of the Common Area or any improvements comprising a part thereof from time to time.

Section 7.5 Conveyance of Common Area to Association. Declarant shall convey the Common Area to the Association, free and clear of any liens, claims or encumbrances, not later than sixty (60) days after Declarant no longer owns a Lot in the Property.

#### ARTICLE 8 SPECIFIC DECLARANT RIGHTS

Section 8.1 Rights to Annex. Declarant may annex additional property to become a portion of the Property and thereafter be subject to the terms, provisions and conditions of these Covenants, provided that so long as the Class B membership provided for in Section 5.2(b) exists, any such annexation by Declarant shall require the prior written approval of HUD or VA. Declarant may exercise such right by recording a written document amending this Declaration to add the additional property hereto in the Real Property Records of Collin County, Texas. No further action or approval shall be required or necessary for the Declarant to annex additional properties into the Property for the purpose of subjecting it to the Covenants. Any document subjecting additional property to the Covenants may also impose additional restrictions upon such additional property. Upon the annexation of any additional property as herein provided, each lot described therein shall become a "Lot" for all purposes hereunder.

Section 8.2 Specific Declarant Rights to Amend Declaration. Declarant, without joinder of the Board, the Association, or the other Owners may amend this Declaration to correct any errors or to cause the Declaration to be in compliance with any City or other governmental requirement (including any requirements imposed by the Federal Housing Administration, the Veterans Administration, the Department of Housing and Urban Affairs, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association).

Section 8.3 Easement/Access Right. Declarant reserves a general easement

4462 1705

over all streets, roads, rights of way, alleys and utility, maintenance, landscaping, wall and other easements in the Property and over the balance of the Common Area for access for the purpose of finishing development of the Property as a subdivision and as otherwise reasonably necessary to effect Declarant's rights hereunder. Such easements and rights shall expire at such time that Declarant no longer owns a Lot.

Section 8.4 Assignment of Declarant Rights. Declarant may assign its rights to a successor declarant hereunder by execution of a written document, recorded in the Real Property Records of Collin County, Texas specifically stating that Declarant has assigned its rights as such to a designated assignee and declaring such assignee to be the new "Declarant" hereunder.

Section 8.5 Declarant's Right to Install Fences, Sprinkler Systems, and other Improvements in Set Back Areas. Declarant reserves the rights to install or construct fences, sprinkler systems and other improvements in the set back areas (being the area between the boundary line of a Lot and the building line or set back lines applicable to such Lot) in connection with development of the Property. If Declarant exercises such right, then such fence, sprinkler system, or other improvement shall be the property of, the Owner of the Lot in question; such Owner may maintain or remove any such improvement.

Section 8.6 Replatting or Modification of Plat. Declarant reserves the right to, from time to time, replat the Property or to amend or modify the Plat in order to assure a harmonious and orderly development of the Property as herein provided. Declarant may exercise such rights so long as it owns any Lot and no joinder of any other Owner shall be required to give effect to such rights, each Owner consenting to Declarant's execution of any replat on such Owner's behalf. However, any such replatting or amendment of the Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for compliance with any applicable governmental regulation. Declarant's rights under this Section 8.6 shall expire at such time Declarant no longer owns a Lot.

Section 8.7 Limitation of Declarant Liability. The Declarant shall not be responsible or liable for any deficit in the Association's funds. Declarant may, but is under no obligation to subsidize any liabilities incurred by the Association and the Declarant may, but is not obligated to, lend funds to the Association to enable it to defray its expenses, provided the terms of such loans are on reasonable market conditions at the time.

#### ARTICLE 9 MISCELLANEOUS PROVISIONS

Section 9.1 Term and Renewal. These Covenants shall commence on the date hereof and shall continue in effect for a period of thirty (30) years. Thereafter these Covenants shall automatically renew for subsequent periods of ten (10) years each unless Owners owning at least seventy percent (70%) of the Lots elect to terminate these Covenants by written instrument recorded in the Real Property Records of Collin County, Texas.

Section 9.2 Enforcement. The terms, provisions and conditions of these

4462 1706

Covenants shall be enforceable by Declarant, the ACC, the Association, and each Owner.

Section 9.3 General Easement for Encroachments, Access, Maintenance and Utilities. Each Owner grants to the Association, the Board, the Declarant and the other Owners a general easement for the maintenance of any minor encroachments of Common Area facilities over adjoining Lots and for access to and from each Owners Lot through driveways, rights of way and easements as reflected on the Plat for the purpose of giving effect to the provisions of these Covenants.

Section 9.4 Amendment of Declaration. These Covenants may be amended by Declarant as provided in Section 8.2. Further, the Declaration may be amended in any respect provided the amendment is approved by Owners owning at least fifty-one percent (51%) of the Lots; provided, however, that no such amendment shall be effective unless joined in by Declarant until such time as Declarant no longer owns a Lot. In addition, so long as the Class B membership provided for in Section 5.2(b) exists, any amendment of these Covenants shall require the prior written approval of HUD or VA.

Section 9.5 City Provisions. All construction within the Property shall also comply with all applicable City ordinances and regulations. If any ordinance or regulation imposed by the City imposes more demanding, extensive or restrictive requirements than those set forth in this Declaration, such requirements shall govern. No ordinance or regulations adopted by the City shall lessen the requirements set forth in these Covenants.

Section 9.6 Notices. All notices required hereunder shall be given by U.S. Mail, postage prepaid, properly addressed to the addressee. Each Lot Owner's address for purpose of notice hereunder shall be deemed to be the Residence located on its Lot.

Section 9.7 Severability. If any of the terms hereof shall be invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of these Covenants, which shall be in full force and effect.

Section 9.8 Binding Effect. These Covenants are for the mutual benefit of and shall be binding upon each and every Person acquiring any portion of the Property.

4462 1707

Executed by Declarant as of the date set forth above.

DALWESTERN II, L. P.

A Texas Limited Partnership

By: DALWESTERN DEVELOPMENTS, INC.

Its: General Partner

By: [Signature]

Name: DAVID F. SICILIANO

Title: V.P.

THE STATE OF TEXAS

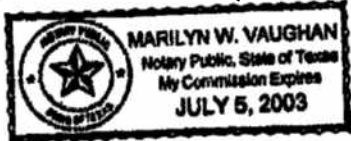
§

§

COUNTY OF COLLIN

§

This instrument was acknowledged before me on June 23, 1999, by David Siciliano, Vice President of ~~DALWESTERN II, L. P.~~, a Texas Limited Partnership, on behalf of said partnership Dalwestern Developments, Inc., general partner of Dalwestern II, L.P. (MV)



Marilyn W. Vaughan  
Notary Public, State of Texas

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW (THE STATE OF TEXAS)  
I hereby certify that this instrument was FILED in the File Number 99-0091224 on this day and the same stamped herein by me and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

JUL 21 1999

Helen Starnes



Filed for Record in:  
COLLIN COUNTY, TX  
HONORABLE HELEN STARNES

On 1999/07/21

At 12:05P

Numbers: 99- 0091224  
Type : R8 49.00

This is to certify that this is a true and correct copy of the document it purports to be  
FAIR LAND TITLE COMPANY

4462 1708

BY [Signature]  
99- 0091225

FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR VILLAGES OF PRESTON GLEN

State of Texas :  
County of Collin :

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Villages of Preston Glen is executed effective as of July 19, 1999 by Dalwestern II, L.P. ("Declarant")

RECITALS:

- A. Declarant is the owner of the property in Collin County, Texas which Declarant is developing as an addition to the City of Plano to be known as Villages of Preston Glen (the "Property").
- B. Declarant executed that Declaration of Covenants, Conditions and Restrictions for Villages of Preston Glen (the "Declaration") dated June 23, 1999 and filed for record as Instrument No 99-0091224 in the Real Property Records of Collin County, Texas, which imposed certain covenants, conditions, restrictions and easements therein described upon the Property.
- C. Declarant pursuant to Article VIII Section 8 5 of the Declaration desires to assign its position as Declarant.
- D. Declarant owns one hundred and fifty-six lots, or 100% of the votes and Declarant wishes to amend the Declaration as more fully set forth below.

AMENDMENT:

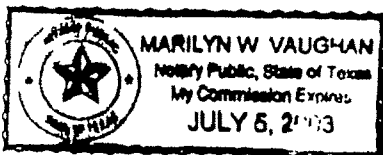
Amend Article I Section 1.2 Definitions is hereby amended by striking Dalwestern II, L.P. and substituting Goodman Family of Builders, L.P.

DALWESTERN II, L.P.  
a Texas limited partnership, BY: Dalwestern Developments, Inc., a Texas corporation, its General Partner

By: [Signature]  
Name: David F. Siciliano  
Title: Vice President

THE STATE OF TEXAS  
COUNTY OF DALLAS

This Instrument was acknowledged before me on July 19, 1999, by David F. Siciliano, Vice President of ~~Dalwestern II, L.P.~~ Dalwestern II, L.P. a Texas limited partnership, on behalf of said partnership, ~~located in the County of Collin, State of Texas~~ of Dalwestern Developments, Inc., a Texas corporation as General Partner of Dalwestern II, L.P.



[Signature]  
Notary Public, State of Texas

4462 1709

ANY PROVISION WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE  
DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND  
UNENFORCEABLE UNDER FEDERAL LAW  
THE STATE OF TEXAS  
I hereby certify that this instrument was FILED in the File Number Sequence on the date  
and the fees stamped herein by me, and was duly RECORDED, in the Official Public  
Records of Real Property of Collin County, Texas on

COUNTY OF COLLIN

JUL 21 1999

*Helen Starnes*



Filed for Record in:  
COLLIN COUNTY, TX  
HONORABLE HELEN STARNES

On 1999/07/21

At 12:07P

Number: 99- 0091225  
Type : RS 11.00

correct copy of the document is prepared by  
FAIR LAND TITLE COMPANY

4462 1708

BY David F. Scilliano  
99-0091225

(1)

FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR VILLAGES OF PRESTON GLEN

State of Texas  
County of Collin

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Villages of Preston Glen is executed effective as of July 19, 1999 by Dalwestern II, L.P. ("Declarant")

RECITALS:

- A. Declarant is the owner of the property in Collin County, Texas which Declarant is developing as an addition to the City of Plano to be known as Villages of Preston Glen (the "Property")
- B. Declarant executed that Declaration of Covenants, Conditions and Restrictions for Villages of Preston Glen (the "Declaration") dated June 23, 1999 and filed for record as Instrument No 99-0091224 in the Real Property Records of Collin County, Texas, which imposed certain covenants, conditions, restrictions and easements therein described upon the Property
- C. Declarant pursuant to Article VIII Section 8.5 of the Declaration desires to assign its position as Declarant
- D. Declarant owns one hundred and fifty-six lots, or 100% of the votes and Declarant wishes to amend the Declaration as more fully set forth below

AMENDMENT:

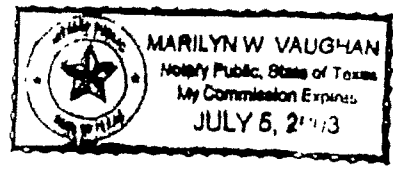
Amend Article I Section 1.2 Definitions is hereby amended by striking Dalwestern II, L.P. and substituting Goodman Family of Builders, L.P.

DALWESTERN II, L.P.  
a Texas limited partnership, BY: Dalwestern Developments, Inc., a Texas corporation, its General Partner

By: [Signature]  
Name: David F. Scilliano  
Title: Vice President

THE STATE OF TEXAS  
COUNTY OF DALLAS

This Instrument was acknowledged before me on July 19, 1999, by David F. Scilliano, Vice President of ~~Dalwestern II, L.P.~~ Dalwestern II, L.P. a Texas limited partnership, on behalf of said partnership of Dalwestern Developments, Inc., a Texas corporation as General Partner of Dalwestern II, L.P.



[Signature]  
Notary Public, State of Texas



4462 1709

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE  
DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND  
UNENFORCEABLE UNDER FEDERAL LAW (COUNTY OF COLLIN,  
THE STATE OF TEXAS)  
I hereby certify that this instrument was FILED in the File Number Sequence on the date  
and the date stamped hereon by me, and was duly RECORDED, in the Official Public  
Records of Real Property of Collin County, Texas on

JUL 21 1999

*Helén Starnes*



Filed for Record in:  
COLLIN COUNTY, TX  
HONORABLE HELEN STARNES

On 1999/07/21

At 12:07P

Number: 99- 0091225  
Type : RS 11.00