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**AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
WESTMONT**

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TARRANT

WHEREAS, Goodacre Limited Partnership, Texas limited partnership (the "Declarant"), then being the owner of Lots 1 through 12 of Block A, Lots 1 through 24 of Block B, Lots 1 through 24 of Block C, and Lots 1 through 20 of Block D, all in Blocks E, F, G, H, J and K, and all other lots, except for Lot 1, Block I, (the "Benedict Lot", shown on the Final Plat (hereinafter defined) in Westmont, an Addition (the "Addition") to the City of Colleyville, Texas (the "City") according to the plat (the "Final Plat") thereof recorded in Cabinet A, Slides 6060 and 6061 of the Plat Records of Tarrant County, Texas (the "County"), as described in Exhibit A, attached hereto and incorporated herein by reference, filed that certain Declaration of Covenants, Conditions and Restrictions for Westmont executed August 17, 2000 (as heretofore amended, the "Declaration"), recorded in Volume 14481, Page 0249.001 of the Deed Records of Tarrant County, Texas, and

WHEREAS, Section 5.14 of the Declaration as amended provides that Declarant shall, prior to the closing of the sale of the last lot to any entity, form a homeowners' association; and

WHEREAS, Declarant has formed a homeowners' association by filing Articles of Incorporation for Westmont Maintenance Association, Inc. a Texas non-profit corporation, file-stamped January 7, 2003, and adopted bylaws for such non-profit corporation;

NOW, THEREFORE, the term "Association" in the Declaration will accordingly henceforth refer to Westmont Maintenance Association, Inc., a Texas non-profit corporation, and the term "Association Documents" shall refer to the Articles of Incorporation filed with the Secretary of State, file-stamped January 7, 2003, and the Bylaws adopted by the Board of Directors of the Association on January 13, 2003, as such articles and bylaws may hereafter be amended, as well as to additional documents that may hereafter be adopted by Declarant.

FURTHER, in connection with the formation of the Association, the following are added as new or amended Articles to the Declaration:

WESTMONT

ARTICLE VI
THE ASSOCIATION

A. Delegation of Rights, Powers and Duties. Declarant hereby delegates to the Association the rights, powers and duties of maintaining, administering, operating and improving the Common Areas (as hereinafter defined) within the Addition, the right to administer and enforce the provisions of the Declaration, and the function of collecting and disbursing the assessments and charges hereinafter created.

B. Membership. Every person or entity who is the legal owner of a Lot (as hereinafter defined) shall be a Member of the Association, except for the owner of the Benedict Lot. For the purpose of distinguishing membership of Class B members and Class C members, Class C members shall be deemed to be Class B members upon the earlier to occur of (1) a determination, which shall not be unreasonable, of the Declarant and, after Resignation, of the President of the Association, of substantial completion of the Living Unit (as hereinafter defined) on the Lot, and (2) the issuance by the City of a certificate of occupancy for the Living Unit on the Lot.

C. Class of Members. The Association shall have three classes of members until both Resignation and Buildout (as defined below) have occurred, at which point the Association shall only have one class of members. Class A members shall consist of the Declarant. Class B members shall consist of all members who own a Lot on which a Living Unit has been built and occupied, notwithstanding that the Living Unit may have subsequently become vacant, damaged or destroyed. Class C members shall consist of all members other than Declarant who own a Lot on which a Living Unit has not been built and occupied.

D. Voting Rights. Class A members (and, after Resignation and Buildout, all members, as limited below) shall be entitled to vote on all matters submitted to a vote of the members. Except as otherwise provided herein, Class B and Class C members shall not be entitled to vote on matters submitted to a vote of the members until such time as Declarant resigns its membership in the Association ("Resignation"); provided, however, that each Lot is entitled to only one vote and that members eligible to vote that are co-owners of a Lot, must vote as one unit. If not sooner occurring at the option of Declarant, Resignation shall occur only after the first annual meeting of the Association and when Declarant no longer owns a Lot and files a memorandum confirming such status and resigning its membership in the Real Property Records of Tarrant County, Texas. At Resignation, the Association shall no longer have Class A members and all members shall be either Class B or Class C members. After a Living Unit has been built and first occupied on each Lot in the Addition ("Buildout"), the Association shall no longer have Class C members. Accordingly, after both Resignation and Buildout, members will be of a single class.

Members eligible to vote shall be entitled to cast one (1) vote for each Lot owned. When more than one person or entity holds an ownership interest in a Lot, all such persons or entities shall be

members and the vote for the Lot shall be exercised as all members owning an interest in the Lot may among themselves determine, **but in no event may more than one vote be cast for any one Lot.** In the event that members that co-own a Lot can not determine a single vote for an issue and more than one vote for the Lot is cast, the vote that the Lot is eligible to cast shall be disallowed as provided in the Bylaws of the Association.

E. Suspension of Membership Rights. The membership rights (including voting rights, when applicable) of any Member may be suspended by action of the Board of Directors as provided in the Bylaws of the Association.

F. Board of Directors. All actions of the Association shall be taken by action of its Board of Directors or by its officers acting within the scope of their authority. The Initial Board of Directors shall be appointed solely by Declarant. Immediately prior to and after Resignation, Directors shall be elected by the members in accordance with the Bylaws.

G. Property Rights and Common Properties

1. Definitions

a. "Common Areas" Common Areas refer to that land and facilities in any one of the following categories:

- (1) Any land and/or facilities within easements benefitting the Association and any other land or facilities within the Addition deeded to the Association by Declarant or otherwise acquired by the Association or labeled on the Final Plat as Private Open Space or P.O.S.;
- (2) Any land and/or facilities within the areas on the Final Plat marked as Trail Right of Way (or Trail ROW) and/or Unpaved Right of Way Dedication (or ROW Dedication), or the unpaved rights-of-way of Westmont Drive, Reverchon Court, Freemont Court, Quillin Court, Compton Court, Colden Court, Muir Lane, Weller Lane, Bartram Lane, Leopold Lane, Hillier Court, and Vines Court (the "Westmont ROW Maintenance Areas");
- (3) Any property except Lots subject to the Declaration, or the covenants, conditions, restrictions, liens or charges imposed by the Declaration, including (i) property now owned by Declarant, (ii) property that may be acquired by Declarant and annexed as additional phases and subjected to the Declaration, and (iii) property

owned or acquired by third parties that may be annexed as additional phases and subjected to the Declaration.

b. "Lot" shall mean and refer to any platted lot on the subdivision plat of the Addition, with the exception of Common Areas and the Benedict Lot.

c. "Living Unit" shall mean and refer to a building situated upon a Lot designed and intended for use and occupancy as a single family residence, as permitted by the City.

2. Members' Easements of Enjoyment. Subject to these terms, conditions and provisions and such rules as may be promulgated by the Board of Directors of the Association, every Member shall have a right and easement of enjoyment in and to the Common Areas, except portions of Common Areas within any Lot, and such easement shall be appurtenant to and shall pass with the title to every Lot. In addition, every Member may delegate, in accordance with the Bylaws of the Association, his right and easement of enjoyment to members of his family, his guests only if accompanied by a Member or by members of his family, and his tenants under a written lease of at least one year who reside on a Lot owned by such Member, and to the guests of such tenants, but only if such guests are accompanied by a Member, a family member of a Member or tenant as aforesaid.

3. Title to Common Area. Declarant may retain legal title to the Common Areas or portions thereof until such time as, in the sole judgment of Declarant, the Association is able to maintain the same. After conveyance of the Common Areas to the Association, in the event that the Association fails to maintain the Common Areas or if the Declarant advises the Association, in writing, of its intent to do so, the Declarant may, if it so desires, maintain and make improvements to the Common Areas, but Declarant has no obligation to do so and the cost incurred by Declarant in so doing shall be a loan to the Association (repayable on such reasonable terms as the Declarant may determine), to be repaid by the Association by means of the assessments provided herein. Any such improvements made by Declarant shall be kept by the Association in good health, if plant materials, and in good repair if non-plant improvements. **This Article VI, Section G-3 may not be deleted, amended or otherwise altered without the prior written consent of the Declarant.**

4. Benedict Lot. The owner ("Benedict") of the Benedict Lot is not a member of the Association. The Benedict Lot shall be maintained, administered, operated, and improved by Benedict and/or his successors, assigns or heirs. In the event that Benedict, his successors, assigns or heirs do not so maintain the Benedict Lot, the Association, may, but is not obligated to, maintain and improve the stone columns and iron fence along any portion of the Benedict Lot, and the landscape, hard and soft, on the Benedict Lot, but only with the prior consent of Benedict or the then owner of the Benedict Lot. In such event, Benedict or the then owner of the Benedict Lot shall reimburse the Association for such maintenance within thirty (30) days of receiving a written invoice for such work.

H. Conservation Area. Declarant hereby delegates, assigns, and transfers to the Association the duties, rights and powers described in Section 1.16 of the Declaration, including, but not limited to, the duties of the permittee responsible for the Project as is set forth in the letter (the "COE Letter") dated October 4, 1997 from the Department of the Army, Fort Worth District, Corps of Engineers attached to the Declaration as Exhibit D. The Association shall comply with the terms and requirements of the COE Letter and hereby indemnifies and holds the Declarant harmless from and against any and all costs, damages, loss or liability of any nature whatsoever (including reasonable attorney's fees) which arise on account of the failure of the Association to adhere to the terms and requirements of the COE Letter. **This Article VI, Section H may not be deleted, amended or otherwise altered without the prior written consent of the Declarant.**

I. Restricted Area. At Resignation, Declarant shall delegate, assign, and transfer to the Association the duties, rights and powers described in Section 3.1 of the Declaration.

ARTICLE VII

MAINTENANCE ASSESSMENTS

A. Creation of Lien and Personal Obligation. Each owner of any Lot shall, by acceptance of the deed thereto, whether or not it shall be so expressed in each such deed or conveyance, be deemed to have covenanted and agreed to pay to the Association periodic assessments, special assessments, cleanup assessments, and charges for the enforcement of the payment of assessments as set forth herein. Such assessments shall be fixed, established and collected from time to time as provided in the Bylaws. Such periodic, special, and cleanup assessments together with interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on and a continuing lien against the Lot upon which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, including reasonable attorneys' fees, shall also be the personal obligation of the owner of the Lot assessed at the time the assessment is made.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of maintaining and enhancing, within the limits of the Declaration, as amended, the use of the Common Areas, the Conservation Area, and the Restricted Area, and, in particular, for the improvement, landscaping and maintenance of property and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, the Conservation Area, and the Restricted Area, including, but not limited to, the payment of taxes and insurance thereon, repair, replacement and additions thereto, payment for services, including attorneys' and accountants' fees, labor, equipment, and materials, management and supervision necessary or incidental to such purposes as determined by the Board of Directors, repayment of funds advanced by the Declarant, expenses of collecting and accounting for assessments, expenses for filing tax returns, the preparation, printing and distribution of the roster of members, the purchase of errors and omissions and/or liability insurance for the officers and directors of the Association, the enforcement of these covenants, conditions and restrictions, and for the encouragement of high standards of landscaping, tree planting and maintenance

of the Common Areas, the Conservation Areas, and the Restricted Area and all improvements located thereon within the Addition and otherwise as provided in the Bylaws of the Association. All periodic assessments described in Article VII, Section C below and special assessments described in Article VII Section D below must be allocated against all Lots in proportion to the respective size of the Lots, with periodic assessments against each Lot rounded up to the nearest \$10.00 increment per payment period.

C. Periodic Assessments. The Board of Directors of the Association will, after consideration of current maintenance costs and future needs of the Association, fix the amount of the periodic assessment and the interval at which such assessment is payable, which may be payable other than monthly if so determined by the Board of Directors, notwithstanding the provisions of Section 5.14 of the Declaration.

D. Special Assessments. In addition to the periodic assessments authorized by Article VII Section C above, and the special assessment created pursuant to Article XI, Section E below, the Board of Directors may levy in any year one or more special assessments, applicable to that year only, for the purpose of defraying, in whole or in part, any expense of the Association unanticipated by the Board of Directors in establishing the Periodic Assessment for the year, including but not limited to, the cost of any construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Areas, the Conservation Areas and/or the Restricted Areas, including the necessary fixtures and personal property related thereto. In addition, special assessments may be assessed for the purpose of defraying, in whole or in part, the costs to enforce the payment of the assessments, including, but not limited to, court costs and attorneys' fees.

E. Cleanup Assessments. The Board of Directors may assess against all Lots owned by Class C owners and any other class of members for which a building permit has been issued and construction is producing trash outside the Lots, as determined in the sole discretion of the Board of Directors, a cleanup assessment to reimburse the Association for the cost of removing trash, debris, and garbage from, and otherwise to mitigate any damage to, the streets, Lots, Common Areas, Conservation Area and Restricted Area within the Addition due to construction-related activity. Except as set forth below, all cleanup assessment shall be assessed ratably against all Lots owned by Class C members and all members of any other class as determined by the Board of Directors set forth above. In the event that the Board of Directors determines that debris or trash is resulting only from a specific Lot or Lots, the Board of Directors, in its sole discretion, may assess a clean up assessment against such individual Lot or Lots and not against all Class C members.

F. Subordination to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon a Lot subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or other proceeding or conveyance in lieu of foreclosure. Such sale or transfer shall not relieve such Lot

of its owner from liability for any assessments thereafter coming due nor from the lien of any such subsequent assessment.

G. Change in assessments. Periodic assessments, special assessments and cleanup assessments may be changed by the Board of Directors at any time as they deem necessary. The board will give each Member written notice of the change, which change shall be effective on the next due date, or on such other effective date as may be determined by the Board of Directors.

H. Due date of assessments. The periodic assessments provided for herein shall become due and payable on the date specified by the Board of Directors and the due date of any special assessment shall be fixed by the resolution authorizing such assessment. The Board of Directors may, at its option, set the periodic assessments to be due in monthly, quarterly, semi-annual or annual installments and determine the due dates thereof, and such due dates may be changed again by the Board of Directors to monthly, quarterly, semi-annual or annual assessments as often as the Board of Directors may reasonably determine to be appropriate.

I. Duties of the Board of Directors. The Board of Directors shall prepare and maintain, or have a third party consultant (the "Consultant") prepare and maintain, a roster of the members and assessments applicable thereto which shall be kept in the office of the Association or elsewhere as may be approved by the Board of Directors and shall be open to inspection upon prior appointment by any owner.

Written notice of assessments and of any subsequent changes thereto shall be sent to every owner subject thereto.

The Association shall upon request at any time furnish to any owner liable for assessments a certificate in writing signed by an officer of the Association or an officer of the Consultant setting forth whether and to what extent assessments against Lots owned by that owner have been paid. A reasonable charge may be made for the issuance of such certificate, which charge shall be paid upon delivery of such certificate, and such certificate shall be conclusively deemed evidence of payment of any assessment therein stated to have been paid.

J. Remedies of Association. If any assessments as provided herein are not paid when due, then the amount of such assessment, together with interest thereon and all costs of collection thereof as hereinafter provided, shall forthwith become a continuing lien on the Lot against which such assessment was made and shall bind such Lot in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If any assessment is not paid by the last day of the month in which it is due, the assessment shall be increased by a late charge of \$100.00 and will bear interest from the date of delinquency at the rate of 10% per annum, and the Association may bring an action at law against the owner personally obligated to pay the same and/or foreclose the lien against the Lot against which such assessment is made and there shall be added to the amount of such assessment all costs of preparing and filing the petition in such action and, in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with costs of the action. No owner may waive or otherwise escape liability for the assessments provided for herein by non-usage of the Common Areas or abandonment of his Lot.

The Board of Directors in its sole discretion, may, on an individual basis, waive some or all of any late charges and interest due hereunder and it shall not be the duty of the Board of Directors to collect late charges and interest in the event that it elects to waive such on a case by case basis.

K. Exempt Property. All properties exempted from taxation by the laws of the State of Texas, upon the terms and to the extent of such legal exemption and all Common Areas shall be exempt from the assessments, charges and liens created herein; provided, however, that no Lot shall be exempt from said assessments, charges or liens.

ARTICLE VIII **BLOCKS A AND B SUB-ASSOCIATION**

A. Sub-Association. There is hereby established a separate sub-association (the "Blocks A and B Sub-Association" or the "Sub-Association") for those Lots in Blocks A and B for the purposes set forth below. This Sub-Association shall become active at Resignation. Until Resignation, the Sub-Association shall have no rights, powers or duties, except as identified by the Declarant.

B. Composition. Every person or entity who is the legal owner of a Lot within Block A and/or Block B shall be a member of the Sub-Association.

C. Slate of Officers. All actions of the Blocks A and B Sub-Association shall be taken through the action of its elected "Slate of Officers" (herein so called). After Resignation, the Slate of Officers shall consist of three members, each elected by the Members of the Sub-Association at a meeting called for such purpose. Each officer shall serve a term of one year. Officer elections shall occur annually on the anniversary of the prior year election; provided however, that should said day fall upon a legal holiday, then at the same time on the next business day thereafter. Prior to Resignation, the Declarant may appoint up to one or more individuals to serve as the Slate of Officers until Resignation, or Declarant may elect to fulfill the responsibilities of the Slate of Officers itself until Resignation.

