

FOURTH AMENDMENT TO DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR WESTMONT

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS

COUNTY OF TARRANT

§

WHEREAS, Goodacre Limited Partnership, a Texas limited partnership (the "Declarant"), 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; as amended by that certain Amendment dated January 17, 2003, recorded February 3, 2003 Volume 16362, Page 46 of the Deed Records of Tarrant County, Texas; as subsequently amended by that certain Second Amendment dated April 20, 2007, recorded April 23, 2007 as Instrument #D207140013 in the Deed Records, Tarrant County, Texas; as subsequently amended by that certain Third Amendment dated June 22, 2007, recorded July 17, 2007 as Instrument #D207249082 in the Deed Records, Tarrant County, Texas; and

WHEREAS, Article 5.15 of the Declaration as amended provides that until the sale by Declarant of the total number of lots in the Addition to entities unrelated to Declarant, Declarant may amend the Declaration in whole or in part; and

WHEREAS, as of the date hereof, Declarant has not sold the total number of lots in the Addition to entities unrelated to Declarant; and

WHEREAS, Declarant desires to amend the Declaration;

NOW, THEREFORE, Declarant adopts the following amendments to the Declaration, as amended, to wit:

Article II "ARCHITECTURAL CONTROL" is hereby amended by amending Section 2.2 "Successors" to read as follows:

Section 2.2 Successors. In the event of the death, resignation or removal by Declarant of any member of the Committee, Declarant may appoint a successor member. Declarant shall have full authority to designate and appoint a successor. Until Resignation, for services performed, all Committee members shall be entitled to receive, from some or all of the Committee Review Fee (defined herein below), fair compensation and reimbursement of expenses incurred in the execution of their duties, pursuant to this Declaration, as amended. However, no member of the Committee shall be liable for claims, cause of action or damages arising out of services performed or not performed, pursuant to this Declaration, as amended.

Article II "ARCHITECTURAL CONTROL" is hereby amended by amending Section 2.3 "Authority" to read as follows:

Section 2.3 Authority. No dwelling structure, garage, outbuilding, fence, wall, landscaping (including tree removal, exterior lighting, sculpture and other outdoor art, and outdoor recreational equipment), excavation or grading, flatwork (sidewalks,

driveways, patios, and porches), or other improvements shall be commenced, erected, placed, maintained or altered on any lot, including an Open Space lot or right-of-way adjacent thereto, nor shall any exterior painting of, exterior addition to, or alteration of, such items be made until all construction and landscaping plans and specifications and a plot plan have been submitted to and approved in writing by a majority of the members of the Committee which may consider and decide upon:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, proper facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on other lots in the Addition; and
- (c) the other standards set forth within this Declaration (and any amendments hereto), including the Standards described in Section 2.5 herein below, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

In considering the harmony of external design between existing structures and the proposed building being erected, placed or altered, the Committee shall consider the general appearance of the proposed building as that can be determined from front, rear and side elevations on submitted plans.

The Committee is authorized and empowered, but not obligated, to consider, review, disapprove and approve any and all aspects of construction and landscaping which may, in the reasonable opinion of the Committee, adversely or positively affect the living enjoyment of one or more lot owners or the general value of lots in the Addition and, pursuant thereto, the Committee may require the submission of plans and specifications therefore prior to the commencement, or during the process, of such construction or landscaping, and the Committee may require the submission of "as-built" plans and specifications according to reasonable criteria that it establishes.

The Committee is authorized and empowered to require a meeting of the lot owner and lot owner's builder, house designer, and landscape designer with the Committee as a whole or with a designated Committee member for the purpose of considering at lot owner's lot A. lot conditions and B. creating plans and specifications, the plans and specifications submittal and review process, and C. monitoring construction and landscaping.

The Committee is authorized and empowered to require one or more meetings, but no more than reasonably necessary, of the lot owner and lot owner's representative, as well as lot owner's builder, house designer, landscape designer with the Committee as a whole or with a designated Committee member for the purpose of reviewing construction and landscaping in place and materials used vis a vis approved plans and specifications, and for the purpose of review of "as-built" plans and specifications versus work in place and specifications following completion of construction and landscaping.

Article II "ARCHITECTURAL CONTROL" is hereby amended by amending Section 2.4 "Procedure for Approval" to eliminate the following sentence:

The Committee is authorized to require that payment by lot owners of a review fee (the "Committee Review Fee") be made to the Committee or to its consultants, who may be members of the Committee, which payment shall accompany each set of plans and specifications submitted to the Committee for review.

and to replace it with the following sentence:

Declarant and the Committee, in their sole discretion, are each authorized to require that lot owners pay a review fee (the "Committee Review Fee") in whole to, or partially among, any of Declarant, the Association, or its consultants, who may be members of the Committee, which payment shall accompany each set of plans and specifications submitted to the Committee for review.

Article IV "ASSESSMENTS" is hereby amended by deleting the caption of "Section 4.3 Individual Special Assessment" and replacing it with the caption "Section 4.3 Cleanup Assessment";

Article IV "ASSESSMENTS" is hereby amended by amending Section 4.4 "Individual Special Assessment" to read as follows:

In the event that any Owner is reasonably deemed by the Committee, Declarant, or the Association president, to have violated any provision in this Declaration, such Owner shall be notified in writing by the Association (without necessity of a vote of the Board of Directors), by the Committee, or by Declarant of said violation(s) and shall be assessed \$50.00 per day that the violation exists, continuing from the date of said written notification until the date that such violation(s) is cured, as reasonably determined by the Committee. The accrued amount of Individual Special Assessment shall be payable monthly to the Association on the fifth (5th) day of the following month. At its sole option and in its sole discretion, the Declarant or the Association may, upon receiving a written request, waive all or a portion of the Individual Special Assessment set forth in this Section 4.4."

Article IV "ASSESSMENTS" is hereby amended by amending the first sentence of the second paragraph of Section 4.6 "Remedies of Declarant and/or Association" to read as follows:

If an assessment is not paid within fifteen (15) days after its due date, the assessment shall be increased by a late charge of \$100.00 and shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot against which such assessment is made, and there shall be added to the amount of such assessment the cost 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 the cost of the action.

Article VII "Maintenance Assessments" is hereby amended by amending Article B. "Purpose of Assessments" to read as follows:

B. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of enforcing these covenants, conditions and restrictions as set forth in this Declaration and of promoting the recreation, health, safety, enjoyment and

welfare of the Members in the use of the Common Areas, the Conservations Area, and the Restricted Area, and, in particular, for the improvement, landscaping and maintenance of property and facilities devoted to this purpose and relating to the use and enjoyment of the Common Areas, the Conservations Area, and the Restricted Area, including, but not limited to, the payment of taxes and insurance thereon; repair and replacement and additions thereto; payment for services, including attorneys' and accountants fees, labor; equipment, and materials, management and supervision necessary of incidental to such purposes as determined by the Board of Directors; repayment of funds advanced by the Declarant plus interest due thereon; expenses of collecting and accounting for assessments; expenses for preparing and filing tax returns; the preparation, printing and distribution of the roster of members; the encouragement of high standards of architecture, landscaping, tree planting and maintenance of the lots within the Addition and of the Common Areas and the Restricted Area; providing for the payment or reimbursement of expenses and liabilities related to the indemnity of persons and parties as provided hereafter and as provided in the Association Documents, and otherwise as provided in the Bylaws of the Association. All periodic assessments described in C. below and special assessments described in D. below must be allocated against all Lots in proportion to the respective size of the Lots, rounded up to the nearest \$1.00 increment per payment period.

Article VII "Maintenance Assessments" is hereby amended by amending Article D. "Special Assessments" to read as follows:

D. Special Assessments. In addition to the periodic assessments authorized by C. above, the board of directors may levy in any year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, any unanticipated expense of the Association, including but not limited to attorney's fees, cost of litigation, court costs, expenses of mediation and arbitration, the cost of any construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common 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 assessments and the costs of paying or reimbursing expenses and liabilities related to the indemnity of persons and parties as provided hereinafter and as provided in the Association Documents including, but not limited to, court costs and attorneys fees.

Article XII. "Indemnification" is hereby added to the Declaration to read as follows:

ARTICLE XII

INDEMNIFICATION

Article 12.1 Indemnification. As further provided for and conditioned in Articles 12.2 and 12.3, the Association shall indemnify any member, director, or officer, or former member, director, or officer, of the Association or member or former member of the Committee, against expenses actually and necessarily incurred and any amount paid in satisfaction of judgments in connection with any action, suit or proceeding, arising out of or in connection with the conduct of, or participation in, the business or affairs of the Association or the Committee by such member, director, or officer, or the performance by such member, director, or officer of his or her duties on behalf of the

Association or the Committee, whether civil or criminal in nature, in which said member, director, officer, or agent is made a party by reason of being or having been such a member, director, or officer (whether or not a member, director, or officer at the time such costs or expenses are incurred by or imposed upon him). Also as further provided for and conditioned in Articles 12.2 and 12.3, the Association shall pay or cause to be paid to any member, director, or officer the reasonable costs of settlement of an such action, suit or proceeding. Such right of indemnification shall not be deemed exclusive of any rights to which such member, director, or officer may be entitled by law or under any applicable agreement, or otherwise.

Article 12.2 Conditions of Indemnification.

(a) To the greatest extent not inconsistent with the laws and public policies of Texas, the Association shall indemnify, as a matter of right, any such member, director, or officer, or former member, director, or officer of the Association or member or former member of the Committee (herein referred to as the "Indemnified Person"), including any responsible officer, partner, shareholder, director, or manager of any member which is a legal entity other than a natural person, who is made party to any proceeding, against all liability incurred by the Indemnified Person in connection with any proceeding; provided that it is determined in the specific case according to subArticle (d) of this Article, that indemnification of the Indemnified Person is permissible in the circumstances because the Indemnified Person has met the standard of conduct for indemnification set forth in subArticle (c) of this Article. The Association will pay for or reimburse the reasonable expenses incurred by such an Indemnified Person in connection with any such proceeding in advance of final disposition thereof if (i) the Indemnified Person furnished the Association a written affirmation of the Indemnified Person's good faith belief that he or she has met the standard of conduct for indemnification described in subArticle (c) of this Article; and (ii) a determination is made in accordance with subArticle (d) that based on facts then known to those making the determination, indemnification would not be precluded under this Article. The Association must indemnify each such Indemnified Person who is wholly successful on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the Indemnified Person in connection with the proceeding without the requirement of a determination as set forth in subArticle (c) of this Article. On demand by an Indemnified Person for indemnification or advancement of expenses, the Association must expeditiously determine whether the Indemnified Person is entitled to indemnification in accordance with this Article. The indemnification and advancement of expenses provided under this Article is applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article.

(b) The Association may, but need not, indemnify an individual who is or was an employee or agent of the Association to the same extent as if the individual were an Indemnified Person as defined above.

(c) Indemnification of an Indemnified Person is permissible under this Agreement only if the Indemnified Person (i) conducted himself or herself in good faith; (ii) reasonably believed that his or her conduct was in or at least not opposed to the Associations' best interest; (iii) in the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful; and (iv) is not adjudged in any such proceeding to be liable for gross negligence or intentional misconduct in the performance

of his or her duties. The termination of a proceeding by judgment, order, settlement, conviction or on a plea of nolo contendere or its equivalent is not, of itself, determinative that the Indemnified Person did not meet the standard of conduct described in this subArticle (c).

(d) The determination whether indemnification or advancement of expenses is permissible must be made in any one of the following manners:

(i) By a majority vote of the Directors of the Association who are not parties to the proceeding; or

(ii) By written opinion of independent legal counsel selected by a majority vote of the Directors of the Association.

(e) An Indemnified Person who is a party to a proceeding may apply for indemnification from the Association to the court, if any, that is conducting the proceeding or to another court of competent jurisdiction.

(f) This Agreement does not limit or preclude the exercise of or exclude any right under law, by contract or otherwise, relating to indemnification of or advancement of expenses to any individual who is or was an officer or director of the Association or is or was serving at the Association's request as an agent of the Association or any individual who is or was a member of the Committee. Indemnification is provided in accordance with this Article, without regard to the nature of the legal or equitable theory on which a claim is made including without limitation negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, or violation of any local, state or federal law, rule or regulation.

(g) For purposes of this Article, the following apply:

(i) The term "expenses" includes all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement or appeal of a proceeding or establishing or enforcing a right to indemnification under this Article, applicable law or otherwise.

(ii) The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(iii) The term "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(iv) The term "proceeding" means any threatened, pending, or completed action, suit, arbitration, mediation, or other proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(v) The Association may purchase and maintain insurance for its benefit, the benefit of any individual who is entitled to indemnification under this Article, or both, against any liability asserted against or incurred by the individual in any capacity or arising out of the individual's service with the Association, whether or not the Association would have the power to indemnify the individual against liability.

12.3 Persons Not Indemnified It is not the intent or purpose of Articles 12.1 or 12.2 to provide indemnity, and no indemnity shall be provided, to any individual or entity who, as a member of the Westmont Maintenance Association or for or on behalf of such a member, participates in a proceeding in which the member is contesting the formation, structure, conduct, or legality of the Westmont Maintenance Association ("Association"), or of its Declaration of Covenants, Conditions, and Restrictions, as amended from time to time ("Declaration"), or of its rules, regulations, guidelines, restrictions, assessments, or the actions and resolutions of its officers, directors, agents, or the Westmont Architectural Control Committee.

Except as specifically set forth herein above, the Declaration is unchanged and shall remain in full force and effect and shall govern the Addition.

Executed this 11th day of June, 2009.

DECLARANT:

GOODACRE LIMITED PARTNERSHIP

By: The David Bagwell Company,
Its general partner \

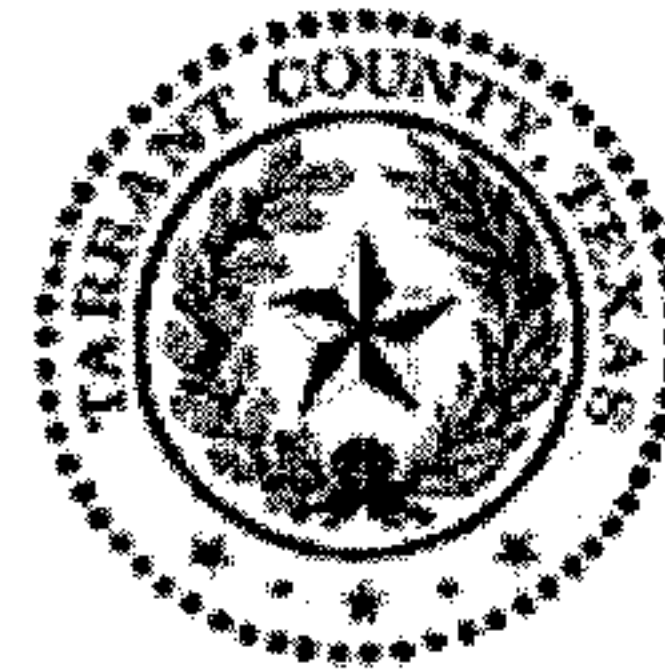
By: 
David S. Bagwell, President

STATE OF TEXAS §
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COUNTY OF TARRANT §

This instrument was acknowledged before me on the 11th day of June, 2009, by David S. Bagwell, in his capacity as the President of The David Bagwell Company, a Texas Corporation, on behalf of said corporation in its capacity as general partner of Goodacre Limited Partnership, a Texas limited partnership, on behalf of such partnership.







GOODACRE LIMITED PARTNERSHIP
P O BOX 1672

COLLEYVILLE TX 76034

Submitter: GOODACRE LMTD/OLD GROVE LMTD

SUZANNE HENDERSON
TARRANT COUNTY CLERK
TARRANT COUNTY COURTHOUSE
100 WEST WEATHERFORD
FORT WORTH, TX 76196-0401

DO NOT DESTROY
WARNING - THIS IS PART OF THE OFFICIAL RECORD.

Filed For Registration: 06/11/2009 04:23 PM
Instrument #: D209156059
QPR 8 PGS \$48.00

By: _____



D209156059

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.

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