

Afton Village Homeowners Association, Inc.

MODIFICATION TO RESTRICTIVE COVENANTS AFTON VILLAGE SECTIONS I AND II

This Modification to Restrictive Covenants (the "**Modification**") shall amend and restate the restrictive covenants ("**Restrictive Covenants**") for Afton Village, Sections I and II, Harris County, Texas, as provided below:

Subdivisions Affected: All of Blocks 1, 2, 3, 4, 5, 6, 7 and 8, Afton Village, Section 1, Houston, Harris County, Texas, according to the Map or Plat filed of record at Volume 46, Page 54 of the Map Records of Harris County, Texas. ("**Section I**")

All of Blocks 7, 8, 9, 10 and 12 and Lots 8, 9, 10 and 11 of Block 11, Afton Village, Section 2, Houston, Harris County, Texas, according to the Map or Plat filed of record at Volume 48, Page 59 of the Map Records of Harris County, Texas. ("**Section II**")

All of Reserve A, Block 11, Afton Village, Section 2, Houston, Harris County, Texas, according to the Map or Plat filed of record at Volume 48, Page 59 of the Map Records of Harris County, Texas. ("**Reserve A**")

Lots 4, 5, 6 and 7, Block 11, Afton Village, Section 2, Houston, Harris County, Texas, according to the Map or Plat filed of record at Volume 48, Page 59 of the Map Records of Harris County, Texas. ("**Blandford Lots**")

Restrictive Covenants Modified:

Deed Restrictions dated October 11, 1954, executed by Afton Oaks Corporation, filed of record October 13, 1954, at Volume 2838, Page 325, Deed Records of Harris County, Texas. (As to Section I). (the "**Original Restrictions**")

Untitled instrument dated August 12, 1955, executed by Afton Oaks Corporation, filed of record August 17, 1955, at Volume 3006, Page 292, Deed Records of Harris County, Texas. (As to Section II, except Reserve A and Lots 1, 2, 3 and 4, Block 11)

Restrictive Covenants executed by various homeowners filed of record under Clerk's File No. K306407 and K306408, and as corrected by Correction of Restrictive Covenants filed of record under Clerk's File No. K398448, all of the Official Public Records of Harris County, Texas. (As to Reserve A)

Procedure to Modify

Restrictive Covenants: The owners of a majority of lots in the Subdivisions Affected may change the Restrictive Covenants by written instrument recorded in the Official Public Records of Harris County, Texas, if the instrument is executed and filed between September 1, 1995 and February 29, 1996. Signatures must be acknowledged but may be contained in separate documents.

Purpose of Modification:(i) Omit all references to Afton Oaks Corporation since the Subdivisions Affected are fully developed and a property owners association will assume its rights, (ii) subject the Blandford Lots to the Restrictive Covenants, (iii) create a property owners association, (iv) modernize and clarify the Restrictive Covenants.

Texas Property Code: This Modification is made pursuant to the provisions of the Original Restrictions, not the provisions of the Texas Property Code. However, the property owners association created by this Modification shall have all powers provided in Texas Property Code Chapters 202 and 204.

This Modification hereby amends and restates the Restrictive Covenants by deleting the Original Restrictions in their entirety and substituting the following restrictive covenants (the “**restrictions**”) in lieu thereof, and, as substituted, the restrictions are hereby RATIFIED, CONFIRMED AND READOPTED.

This Modification is effective upon recordation in the Official Public Records of Harris County, Texas, which date shall be the "**Effective Date**" herein.

PROPERTY RESTRICTED

These restrictions encumber the following described property (sometimes referred to hereinafter as the "**property**" or the "**subdivision**") and the restrictions shall run with the land and bind all owners of the property and all current and future record title owners (an "**owner**" individually and the "**owners**" collectively) of the property:

All of Blocks 1, 2, 3, 4, 5, 6, 7 and 8, Afton Village, Section 1, Houston, Harris County, Texas, according to the Map or Plat filed of record at Volume 46, Page 54 of the Map Records of Harris County, Texas.

All of Blocks 7, 8, 9, 10 and 12 and Lots 8, 9, 10 and 11 of Block 11, Afton Village, Section 2, Houston, Harris County, Texas, according to the Map or Plat filed of record at Volume 48, Page 59 of the Map Records of Harris County, Texas.

All of Reserve A, Block 11, Afton Village, Section 2, Houston, Harris County, Texas, according to the Map or Plat filed of record at Volume 48, Page 59 of the Map Records of Harris County, Texas.

Lots 4, 5, 6, and 7, Block 11, Afton Village, Section 2, Houston, Harris County, Texas, according to the Map or Plat filed of record at Volume 48, Page 59 of the Map Records of Harris County, Texas.

PROVIDED HOWEVER, in the event the owners of one or more of the Blandford Lots do not execute this Modification, then that particular lot shall not be bound by the restrictions.

References in these restrictions may be made to individual lots contained in the property. Such references shall be deemed to be a reference to a subdivided lot set forth in the recorded subdivision plats of Afton Village, Sections I or II, or if the property has never been formally subdivided, then to a separately owned building site owned by the owner in question.

TERM OF RESTRICTIONS

These restrictions shall be covenants running with the land and shall be binding on all parties and persons owning any of the lots in said Afton Village affected by these restrictions from the present time and until the same are changed in accordance with the provisions hereof. The then owners of a majority of the lots affected by these restrictions (regardless of the square foot area of the respective lots) may, by a written instrument executed and filed of record change these restrictions, covenants and conditions in whole or in part as to all of said property or as to any part thereof. The execution of said written instrument shall include acknowledgments thereof in the manner entitling the same to be placed of record, but said instruments need not all be under one cover but may be several different instruments. These restrictions to be perpetual except and until modified, changed or released as herein provided for. These restrictions may be terminated under the above referenced procedure by the consent of the owners of 75% of the lots in the subdivision. The 75% requirement shall be applicable to any attempt to modify the restrictions in a manner which would result in an effective termination. For the purposes of modifying or terminating the restrictions, the signature of one co-owner of a lot shall be deemed to bind all co-owners. Individual signatures to an instrument modifying or terminating the restrictions need not be acknowledged by a notary public. The requirement for an acknowledgment to a modification or termination instrument shall be satisfied by the acknowledged signature of the president of the Association (hereinafter defined in paragraph I). The affidavit of the president of the Association that an instrument has the requisite number of signatures, that a copy of the instrument has been mailed or delivered to each of the owners of lots according to the records of the Association and that the Board (hereinafter defined in paragraph III) has adopted or recommended the instrument shall constitute *prima facie* evidence that all requirements for the instrument to be effective have been satisfied.

PARTIES ENTITLED TO ENFORCE

These restrictions shall be binding upon each owner of any lot or lots affected thereby and each owner of a lot affected by these restrictions shall have the right to enforce these restrictions in law or in equity against the person or persons violating or attempting to violate any such restriction. If any of these restrictions are invalid or are declared invalid by any judgment of a court of competent jurisdiction, the same shall not affect any of the other restrictions or provisions hereof, but such other restrictions and provisions hereof shall remain in full force and effect as each restriction and provisions hereof is separate.

MANAGEMENT AND OPERATION OF THE SUBDIVISION

I. Association

Upon the Effective Date, Afton Village Civic Club, a Texas nonprofit corporation, shall become a property owners association (the "**Association**") whose purpose is to administer the affairs of the subdivision, enforce the restrictions affecting the subdivision, adopt regulations, reasonable standards and interpretations to implement the restrictions, collect and spend income, acquire, improve and maintain common area (if any), and, in general, to act on behalf of owners of property in the subdivision as a property owners association. The Association shall modify its bylaws to implement the powers of the Association and the Board granted by the restrictions and to address such matters as are typically addressed in the bylaws of a property owners association. The Association shall have and may exercise all the powers of a non-profit corporation chartered in the State of Texas and granted a property owners association in Texas Property Code Chapters 202 and 204.

II. Membership

All owners shall be members of the Association. Membership is automatic and mandatory. Each platted lot shall receive 1 vote on all matters of the Association coming to a vote. A lot physically divided between 2 owners shall have no vote. Multiple lots used for 1 building site shall have 1 vote. The unanimous decision of the owners of lot shall be required in order to cast the vote for that lot. Votes may be cast by written proxy, the original of which being delivered to the Board prior to the recordation of the votes. The Board may require an owner to provide a copy of the recorded deed to the subdivision lot and mailing information and a telephone number for the owner, as a condition precedent to such owner's right to vote.

III. Board of Directors

The affairs of the Association shall be managed by a Board of Directors (the "**Board**"). The Board shall have 14 directors, comprised of 4 officers (president, vice-president, secretary and treasurer) and 10 block representatives. Each Board member must be an owner of property in the subdivision. No Board member shall be entitled to any compensation for services performed.

IV. Enforcement, Standards and Interpretations

The Board may enforce the restrictions, but the failure to enforce any particular restriction on a particular violation shall not be deemed a waiver of that restriction. The Board, from time to time, may issue regulations, standards and interpretations relating to particular restrictions, consistent with the purposes and intent of the restrictions, as part of the Board's discretionary authority. Each owner and lot are bound by those regulations, standards and interpretations.

V. Liability

To the maximum extent allowed by law, the Association shall indemnify members of the Board and of committees created by the Board and other volunteers from liability relating to their actions taken in good faith in their official capacity for the Association. The owners intend that no member of the Board or of a committee created by the Board or other volunteer have personal liability for any action taken in good faith in their official capacity for the Association except for gross negligence or willful misconduct. The Board may purchase officers and directors liability insurance for members of the board and of committees created by the board and other volunteers.

RESTRICTIONS

1. Uses

1.1 *Single Family Residential.* All lots shall be used exclusively for single family residential purposes. Both the use of a lot and the structures placed on a lot shall be single family. Multi-family residential, commercial and industrial uses are prohibited, whether conducted on a for profit or a not for profit basis.

1.2 *Renting.* Not less than the entire lot may be rented; no room, section of a house or servants quarters may be rented separately. Renting includes granting the right to any person not related by blood to the owner to reside in a portion of a house in return for any monetary or non-monetary compensation.

1.3 *Home Office.* A home office which meets the following conditions shall be considered a permitted residential activity: (i) no signs identifying or advertising a business, product, or service, (ii) no display of commercial products, inventory or other business related items, (iii) no outside storage of products, inventory or other business related items, (iv) all home office activities are conducted inside a structure, (v) no material disruption, interference or increase in traffic or parking, (vi) no sound or smell is created outside the structure, (vii) no employees, customers or business guests regularly coming to the house, (viii) existence of the home office is not apparent from outside the structure. An average of two (2) or more vehicles per day stopping at the lot over any five (5) day period (whether employees, customers, business guests or deliveries) shall be deemed to be an unacceptable increase in traffic. An average of two (2) or more vehicles per day parking on any street near the lot by persons visiting the lot in any consecutive five (5) day period shall be deemed to be an unacceptable interference with parking. The Board may issue regulations and standards further determining and interpreting these conditions.

2. Lot Subdivision

The lots may not be resubdivided so as to permit a residential structure on a plot having a width less than the average width of the two lots from which such plot is taken as it is the intention of these restrictions that the residences provided for hereinafter shall be on lots, or portions of lots, having a minimum width and depth comparable to the lots as subdivided on the plat filed of record with the County Clerk of Harris County, Texas, and covering such lot. All resubdivisions of lots must be approved by the City of Houston Planning Commission and by the Architectural Review Committee (hereinafter defined in paragraph 7.1).

3. Construction Materials

The exterior walls of all residences shall be of at least fifty-one percent brick, brick veneer, stone, stone veneer, concrete or other masonry type of construction, but with it being understood that this type of masonry construction does not include asbestos shingles or other similar fireproof boarding. No residence shall have a roof of a built up tar and gravel type. A detached garage need not have the outer walls to comply with the masonry type of construction herein provided for, but the provision with reference to the roofs shall apply to the roofs on the garages. This provision shall apply as to said detached garages even though there is a portion of said detached garage building used as servants' quarters.

4. Nuisances, Livestock & Pets

No noxious or offensive activities shall be carried on upon any lot or tract, nor shall anything be done thereon which shall become any annoyance or nuisance to the neighborhood, and no cattle, rabbits, swine, horses, sheep, goats, or other livestock, or fowl, shall be kept on any part of said property, but this shall not prohibit the keeping of dogs or cats as personal pets, but the keeping of such pets shall not be done in such a way as to be obnoxious or offensive to the neighborhood or the adjoining property owners.

5. Outbuildings

No trailer, basement, tent, shack, garage, barn or other similar building erected on any of said property shall be used at any time as a residence either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

6. Building Dimensions and Restrictions

No structure shall be erected, altered, placed or permitted to remain on any lot other than a single family dwelling, a private garage and, if the private garage is detached from the main building, servants quarters in connection with the garage.

6.1 *House.* The floor area of the main dwelling, exclusive of porches, garages and servants' quarters, shall contain not less than 1200 square feet in the case of a one-story dwelling and not less than 2200 square feet in the case of a two-story dwelling, with said two-story dwelling having at least 1800 square feet in the ground floor, with one and one-half story architecture being classed as two stories. A house may not exceed 35 feet in height from grade to roof ridge or have in excess of 2 full stories and a third half-story contained within the structure's roof line.

6.2 *Garage.* Each lot must include a fully enclosed garage (either attached or detached) for not less than 2 or more than 4 vehicles. The roof pitch and roofing materials of garages and porte-cocheres must match those of the house. A detached garage, exceeding 25 feet in height is prohibited.

Any structure which does not comply with these provisions shall be made to comply or shall be removed from said lot.

7. Architectural Review

7.1 *Creation of Committee.* An Architectural Review Committee (the "**Committee**") shall be created by the Board to exercise the architectural review rights of these restrictions. The members of the Committee, to the extent possible, shall have education and expertise relevant to the activities of the Committee such as architectural, design, engineering, construction, real estate, legal, and/or prior service on an architectural review committee of another neighborhood. In the event the Committee is unable to act, by lack of members or otherwise, the Board may assume the rights and obligations of the Committee and act in its stead. A majority of the Committee may designate a representative to act for it. No Committee member shall be entitled to any compensation for services performed.

7.2 *Submission of Plans.* The owner shall submit two sets of building plans, specifications, site plans or plats, as appropriate (the "**Plans**"), to the Committee for (i) the subdivision of any lot, (ii) any planned demolition, remodel, renovation, reconstruction, replacement or other change of an existing structure, building, dwelling, garage, porte-cochere, carport, driveway, sidewalk, wall or fence, or (iii) any planned construction of a new structure, building, dwelling, garage, porte-cochere, carport, driveway, sidewalk, wall or fence. No Plans shall be filed and no such work shall be commenced prior to the approval of the by the Committee. Any modification or change to the approved set of Plans must be approved by the Committee.

7.3 *Approval Process.* The Committee shall review the Plans for (i) compliance with the restrictions, (ii) harmony of external design with existing structures and improvements, and (iii) quality of workmanship and materials. Upon the approval of the Plans, the Committee shall return to the owner one set of same marked "approved" and signed by at least one member of the Committee; any disapproval of the Plans shall be in a writing delivered to the owner. In the event the Plans are properly submitted to the Committee for its review, and the Committee, or its designated representative, fails to approve or disapprove such Plans within thirty (30) days after being submitted to the Committee, and if no suit to enjoin construction is commenced prior to the completion of such construction, then approval is presumed. Except as provided in the forgoing sentence, no action or failure to act by the Committee shall constitute a waiver or estoppel with respect to future action by the Board. The decision of the Committee is final and non-appealable.

7.4 *Inspection of Work.* Upon completion of the work, the owner shall notify the Committee and provide an opportunity for the Committee or its designated representative to inspect the improvements for compliance with the approved Plans and the provisions of these restrictions; in the event the work is not in compliance, the owner agrees and covenants to conform such construction to the approved Plans and the requirements of these restrictions and the Committee.

7.5 *Variances.* Upon the recommendation of the Committee, and subject to approval by the Board, the Committee may allow a variance from the applicable architectural standards and review procedures where, in the opinion of the Committee, such action is necessary for the advantage and best appearance of the Subdivision, as follows: (i) more than one lot is used for building a single family residence, (ii) lots are unusual in size, shape, or (iii) changing circumstances

arising from either advances in technology or other unforeseen developments support a variance in order to accomplish the original purposes of these restrictions or allows a result consistent with the goals of the restrictions.

7.6 Architectural Standards. The Committee may, from time to time, promulgate and distribute architectural standards and review procedures ("**Standards**") which shall be uniformly applied and implement the spirit and intention of these restrictions. Upon adoption by the Board and recording in the Official Public Records of Harris County, Texas, such Standards shall supplement these restrictions, and be incorporated herein by reference.

7.7 No Representation or Warranty. NO APPROVAL OF BUILDING PLANS, SPECIFICATIONS, SITE PLANS OR PLATS, OR PROMULGATION OF STANDARDS, SHALL BE CONSTRUED AS A REPRESENTATION, WARRANTY OR GUARANTEE BY THE COMMITTEE, THE BOARD, THE ASSOCIATION, OR ANY OF THEIR RESPECTIVE MEMBERS, OR DIRECTORS, THAT ANY STRUCTURE WILL BE PROPERLY CONSTRUCTED, CONTAIN ANY PARTICULAR QUALITIES OR BENEFITS OR ENSURE COMPLIANCE WITH APPLICABLE LEGAL REQUIREMENTS. ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED RELATING TO APPROVED BUILDING PLANS, SPECIFICATIONS, SITE PLANS OR PLATS AND PROMULGATED STANDARDS, ARE WAIVED BY ANY OWNER SUBMITTING BUILDING PLANS, SPECIFICATIONS, SITE PLANS OR PLATS FOR APPROVAL OR COMPLYING WITH PROMULGATED STANDARDS. EACH OWNER WAIVES ANY RIGHTS AGAINST THE ASSOCIATION AND/OR THE COMMITTEE AND ITS RESPECTIVE MEMBERS OR DIRECTORS, FOR ANY DAMAGES ARISING OUT OF THE APPROVAL OF BUILDING PLANS, SPECIFICATIONS, SITE PLANS OR PLATS OR THE PROMULGATION OF STANDARDS. THE COMMITTEE AND ITS MEMBERS SHALL HAVE NO LIABILITY FOR ACTIONS WITHIN THE SCOPE OF THE COMMITTEE'S FUNCTION, UNLESS GROSS NEGLIGENCE IS PROVEN AND ALL OWNERS HEREBY EXPRESSLY WAIVE AND RELINQUISH ANY AND ALL CLAIMS AGAINST THE COMMITTEE OR ITS MEMBERS, EXCEPT FOR CLAIMS OF GROSS NEGLIGENCE.

8. Building Setbacks

No building shall be located nearer to the front line or nearer to the side street line than the building set-back lines as shown on the recorded plat. No main dwelling shall be located nearer than five (5) feet to any inside lot line. Detached garages, or other outbuildings, shall be located at least three (3) feet from the side line. No main dwelling shall be located on any interior lot nearer than twenty (20) feet to the rear lot line. The Committee may require the detached garage or other outbuildings to be set to the rear of the main dwelling.

9. Fences and Plantings

No fences, walls, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fence, wall, hedge, or mass planting shall be permitted to be nearer to any street than the minimum building set-back line.

10. Signs

No sign of any kind shall be displayed to public view on any lot except (i) one sign, of not more than six square feet, advertising the property for sale or rent, (ii) temporary political signs, of not more than six square feet each, during the sixty day period prior to an election, and (iii) one sign, of not more than one square foot, giving public notice of a security or alarm system.

11. Mineral Activity

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted

upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

12. Trash

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

13. New Construction

No building, whether a residence or otherwise, shall be moved on to a lot. Any building, structure or improvement constructed on a lot shall be of new construction and built of new materials; however, used architectural material in good condition is allowed subject to the prior written approval of the Committee. Mobile homes, trailer homes, modular homes, and factory built (manufactured) homes are prohibited.

14. Lawn Care

Grass, weeds and vegetation on each lot shall be kept mowed at regular intervals and dead trees, shrubs and plants removed so as to maintain the same in a neat and attractive manner.

15. Utility Easement

An easement for utility installations and maintenance thereof and ingress and egress of the grantor and all others authorized to make such installments and maintain the same is reserved over the property covered by said easements as shown by the recorded plat of such property and the easements affecting said lots are reserved as shown on said recorded plat and in accordance therewith, whether such easement is over the rear property line or over the side property line. Said utility easements are for all utilities now or hereafter to be installed in said locations according to custom and usage from time to time. The utilities may be placed under the streets as designated on said plat as said streets may be used for utilities as well as for traffic and other street purposes.

16. Additional Restrictions by Owner

The owner of any lot or lots in said subdivision may make more onerous restrictions in any deed to any particular lot increasing the floor space required for such particular lot or making any other changes in these restrictions which are more severe and more onerous than the restrictions herein contained with reference to said lot with such increased restrictions to be incorporated in the deed or other instrument at or prior to the time of the sale and passing of title.

17. Relocation of Lot Lines

If two or more lots are resubdivided so that their lines are changed in accordance with the provisions of these restrictions, then the side property lines as said lots are resubdivided shall be considered the property line of said respective lots insofar as these restrictions are concerned, but this provision shall not permit the subdivision of any lot so as to have more than one residence on a single lot, but is for the purpose of permitting slight variations in the lot lines and for the resubdividing and relocating of the lot lines of two or more lots. Any resubdivision must be with the written consent of the Committee. If the owner of one lot acquires a portion of an adjoining lot, the portion so acquired by such owner shall be deemed to be his lot line provided that the owner of the balance of said subdivided lot shall not be entitled to build a main dwelling thereon if its width, together with other property which he owns adjoining the same, is of a less width than called for in these restrictions; provided further that the Committee may by giving its written consent permit the erection of a main dwelling on said lot which has been subdivided if in its opinion the same does not interfere with the best interest of the adjoining property.

18. Parking

No owner, renter, lessee, or servant shall park any of the following vehicles overnight on any street in the subdivision or on any part of a lot unless to the rear of the frontmost line of the house: (i) truck with a tow, wrecker, panel, service,

stake, utility or platform body, (ii) trailer, (iii) house trailer, (iv) motor home, (v) recreational vehicle (RV), (vi) bus, (vii) cab, (viii) camper, (ix) boat, (x) tractor, (xi) vehicle with over two axles, or (xii) vehicle with a rated payload capacity of over one ton.

19. Variances

19.1 *Board Power to Grant.* The Board of the Association may grant variances to the restrictions, except the Uses and Mineral Activity restrictions, where the enforcement of same would be inequitable or inconsistent with the overall purposes and intent of the restrictions. An owner requesting a variance shall give written notice to owners of all lots wholly or partially within 100 feet of the boundaries of the lot in question and make a written application to the Board; said notice and application containing: (i) a description of the applicable restrictions; (ii) description of the requested variance; (iii) reasons for the variance, and (iv) a list of all owners notified. The requesting owner shall be responsible for any costs relating to the consideration of a variance.

19.2 *Required Findings.* No variance shall be issued by the Board without a finding that: (i) granting the variance will not adversely affect the integrity of the subdivision, (ii) the variance is consistent with the overall goals of the restrictions, (iii) no adjacent lot will be adversely affected in any material way, and (iv) no owners shall be adversely affected in any material way. Acceptable reasons for the granting of a variance shall not include: (i) economic hardship; (ii) inability to obtain financing; (iii) inability to obtain approval by governmental agency, or (iv) the Board disagrees with the policy considerations behind the restrictions in question.

19.3 *Approval.* Failure of the Board to respond to a variance request within sixty (60) days after the date received by the Board shall be deemed an automatic denial of the variance. The Board may extend the time period for consideration of the variance to a total of ninety (90) days if the Board deems such period necessary in order to fully evaluate the request. Approval of a variance requires a unanimous vote of all directors in attendance at the Board meeting where the variance is considered.

19.4 *No Rights.* No owner shall be entitled to a variance in any particular circumstance. The granting of a variance in a particular circumstance shall not operate as precedence and shall not be binding upon the Board or any successor Board in any other circumstance, whether similar or dissimilar.

20. Non-Conformity

20.1 *Authorization to Continue.* Any lot, structure or use of a lot in violation of the restrictions as of the Effective Date of this Modification is considered nonconforming. Provided, however, nonconforming lots, structures and uses shall not include any lot, structure or use which violated the restrictions or any applicable laws, ordinances or restrictions prior to the Effective Date of this Modification. Non-conformities may continue in legal existence. Nonconforming structures may be maintained, repaired or cosmetically remodeled, but may not be structurally enhanced, expanded or reconstructed after a casualty loss where over fifty percent (50%) of the value of the nonconforming structure is destroyed. A nonconforming structure loses its legal status at such time as the lot or structure comes into compliance with the restrictions and thereafter, the nonconformity may not resume. Any nonconforming use is deemed abandoned after ninety (90) days of continuous nonuse.

20.2 *Disputes.* In the event of dispute regarding a nonconformity, the Board shall investigate the facts surrounding the nonconformity, solicit input from the owners of all lots wholly or partially within 100 feet of the boundaries of the lot in question, and render its decision, which decision shall be final.

21. General Provisions

21.1 *Attorney's Fees.* The Association shall recover all attorney's fees and court costs incurred in enforcing any provision of the restrictions.

21.2 *Binding Effect.* The restrictions are binding upon and are to the benefit of the owners and their heirs, executors, representatives, successors and assigns, where permitted.

21.3 *Choice of Law.* The restrictions are subject to and governed by the law of the State of Texas and enforceable in Harris County, Texas.

21.4 *Construction.* The restrictions shall be liberally construed to achieve the intent of the owners. Any rule of

construction to strictly construe restrictive covenants or to construe restrictive covenants in favor of the free use of land is inapplicable.

21.5 *Mortgagees.* No violation of the restrictions shall invalidate the lien of any mortgagee made in good faith and for value.

21.6 *Multiple Signature Pages.* This Modification contains multiple signature pages and will be executed in multiple originals without all signatures on any one original. Separate signature pages may be attached to the copy of the restrictions recorded in order to eliminate unnecessary costs of filing multiple copies of the restrictions.

21.7 *Non-Waiver.* No waiver, express or implied, of any violation of the restrictions shall preclude the subsequent enforcement of the restrictions as to that or similar violations. No member of the Board has the authority to waive, modify or terminate any provision of the restrictions.

21.8 *Notices.* Any notice to an owner may be provided by mail addressed to owner at the lot and shall be effected when deposited in the United States mail, postage prepaid, or when hand-delivered (by courier service or otherwise) to the lot if an occupied house exists on the lot (even if no one is home when delivery is made) or such other notice procedure as provided by law (including Texas Property Code).

21.9 *Severability.* The invalidity, abandonment or waiver of any one of the restrictions shall not affect or impair any other of the restrictions and any invalid, abandoned or waived restriction shall be judicially reformed to be valid, enforceable and effectuate the intentions of the owners.

21.10 *Time.* Time is of the essence in the compliance with obligations in the restrictions. A deadline falling on a Saturday, Sunday or holiday recognized by the State of Texas is extended to the next following weekday which is not a holiday.

21.11 *Scope of Prohibitions.* Whenever a use, item, activity or structure is prohibited in the restrictions, the prohibition extends to all real property in the subdivision, unless specifically limited. The use, item, activity or structure prohibited shall include all variations, evolutions, substitutions, replacements, successors or analogous uses, items, activities or structures, so to give effect to the intend of the prohibition. The Board may interpret the scope of prohibitions and the meaning of terms used in the restrictions, as part of its discretionary authority. Those interpretations may be recorded in the Official Public Records of Harris Count, Texas and are binding on the owners and the subdivision when recorded.

THIS MODIFICATION IS EXECUTED BY THE UNDERSIGNED OWNERS OF LOTS IN THE SUBDIVISIONS FOR THE PURPOSES OF AMENDING AND RESTATING THE RESTRICTIVE COVENANTS REFERENCED IN THE PREAMBLE OF THIS MODIFICATION. BY THEIR SIGNATURE BELOW, EACH OWNER REPRESENTS THAT THEY ARE THE RECORD TITLE OWNER FOR THE PROPERTY DESIGNATED AS OF THE DATE OF THEIR SIGNATURE AND, TO THE EXTENT THEY ARE EXECUTING THIS MODIFICATION IN ANY REPRESENTATIVE CAPACITY, THAT THEY HAVE REQUISITE POWER AND AUTHORITY TO EXECUTE THIS MODIFICATION.

POLICY REGARDING DEED RESTRICTION VIOLATIONS

(Adopted by Afton Village Civic Club September 21, 1988)

1. The Deed Restrictions Committee and the Board of Directors of the **AFTON VILLAGE HOMEOWNERS ASSOCIATION** will act upon deed restriction violations which are reported to them in writing. The party reporting a deed restriction violation must also identify him/herself in the written complaint, as *it is expressly the policy of the Board of Directors that no anonymous complaints will be accepted.*
2. Once a written complaint has been received and it is determined by the Deed Restrictions Committee that a violation exists, the Block Captain or a member of the Deed Restrictions Committee will visit in person or telephone the homeowner at fault to explain that there is a violation and to ask that it be remedied in a specified period of time (i.e., seven days).
3. In the event that the violation has not been remedied after the time period specified under Step #2 has elapsed, a formal written request for action should be sent to violator, referring to the prior verbal request. The letter should be signed by at least one member of the Deed Restrictions Committee or the Board of Directors. The violator will be offered an opportunity to come before the Board within a specified time (i.e., 14 days) in order to plead his/her case. A warning will be issued that, if the violation is not remedied, legal action may be initiated.
4. If a homeowner who has been notified in writing that he is in violation of the deed restrictions contacts a Deed Restrictions Committee member or a member of the Board of Directors and indicates his/her desire to meet with the Committee to discuss the violation, then the Committee will respond in writing (through the U.S. mail), notifying the homeowner of the date, time, and place at which the meeting will be held. At least three Board members or members of the Deed Restrictions Committee must be present at this meeting. The purpose of the meeting will be to determine if the violation can be resolved before a lawsuit is filed.
5. If the above-mentioned meeting is held and there is no resolution to the deed restriction violation, or if the homeowner waives his right to meet with the Deed Restrictions Committee by failing to respond to its original letter, then the Board may contemplate taking legal action. **However**, if a vote is to be taken by the Board of Directors to decide whether a lawsuit is to be filed against a homeowner, then the homeowner will be notified in writing (through the U. S. mail) of the date, time, and place of the meeting, and will be invited to attend.
6. The Board of Directors may proceed with legal action against the homeowner violating the deed restriction.

Afton Village Homeowners Association, Inc.

BYLAWS

[Adopted July 29, 1996]

1. Identity

The name of this organization shall be Afton Village Homeowners Association, Inc. (**Association**), formerly known as Afton Village Civic Club, Inc. The Association is a property owners association authorized by the "Modification to Restrictive Covenants Afton Village Sections I and II" (**Restrictions**).

2. Purpose

The purpose of the Association is to: administer the affairs of the subdivision; enforce the Restrictions affecting the subdivision; adopt regulations, reasonable standards and interpretations to implement the Restrictions; collect and spend income; acquire, improve and maintain common area (if any); and, in general, to act on behalf of owners (**Owners**) of property in the subdivision as a property owners association. The Association shall have and may exercise all the powers of a nonprofit corporation chartered in the State of Texas and granted a property owners association in Texas Property Code Chapters 202 and 204.

3. Membership

3.1. Members. All Owners shall be members (**Members**) of the Association. Membership is automatic and mandatory.

3.2. Voting Rights. Each platted lot shall receive one vote on all matters of the Association coming to a vote. A lot physically divided between two Owners shall have no vote. Multiple lots used for one building site shall have one vote. The unanimous decision of the Owners of a lot shall be required in order to cast the vote for that lot. The Board (defined in Paragraph 4) may require an Owner to provide a copy of the recorded deed to the subdivision lot, a mailing address and a telephone number as a condition precedent to such Owner's right to vote.

4. Board of Directors

The Association shall be managed by a Board of Directors (**Board**) composed of four Officers and ten Block Representatives. Each of these Directors must be a Member.

4.1. Officers. The Officers shall be a President, Vice President, Secretary and Treasurer who shall be elected by the Members at large. An Officer shall not also be a Block Representative.

4.1.1. *President.* The duties of the President shall be to: supervise the Association; preside at Board and Association meetings; appoint all chairmen and committees as needed, with the approval of the Board; and call Board and Association meetings.

4.1.2. *Vice President.* The duties of the Vice President shall be to: assist the President; and preside at the Board and Association meetings in the President's absence.

4.1.3. *Secretary.* The duties of the Secretary shall be to: record minutes of all Board and Association meetings; prepare and mail, or otherwise deliver, meeting notices, proxy forms and ballots; maintain Association minutes book; and prepare assigned correspondence.

4.1.4. *Treasurer.* The duties of the Treasurer shall be to: collect all Association money; pay all bills by check signed by the Treasurer and one other Officer; make regular financial reports to the Board; submit an annual budget to the Board for

approval no later than December 31; never exceed approved annual budget line items without Board approval; and keep a complete set of financial records.

4.2 Block Representatives. The Block Representatives shall consist of one representative from each of the ten blocks elected by Members on that block. The ten blocks are:

- Shavelson [West] from Antoine to Afton
- Shavelson [East] from Afton to Coldstream
- Northampton [West] from Antoine to Afton
- Northampton [East] from Afton to Coldstream
- Hartland [West] from Antoine to Afton
- Hartland [East] from Afton to Coldstream
- Alderney [West] from Antoine to Afton
- Alderney [East] from Afton to Coldstream
- Blandford [West] from Antoine to Afton
- Blandford [East] from Afton to the Dead End

The duties of the Block Representatives shall be to: attend Board meetings; make and maintain a roster of all residents on the Representative's block; contact residents on the block to obtain opinions on specific issues and circulate petitions; visit and welcome new residents on the block and furnish information about the community, the Association, and the Restrictions; report any noted new construction on the block to the Architectural Review Committee; report any noted infractions of the Restrictions to the Board; accept any comments from residents on the block and report relevant comments to the Board; inform residents on the block of scheduled Association meetings and special events; and promote participation by the residents.

4.3. Term of Office. All Directors shall be elected to a one year term. The President can serve only two consecutive years. Director terms shall begin at the close of the Annual meeting.

4.4. Elections.

4.4.1. *Nominating Committee.* A Nominating Committee of at least three Members shall be appointed by November 1. This Nominating Committee shall present a list of consenting candidates to the Secretary by January 1.

4.4.2. *Notice and Proxies.* The Secretary shall prepare a notice of the election and a proxy designation form listing the proposed candidates with space for write-ins; said notice and proxy designation form shall be mailed or otherwise delivered to all Members at least 10 days before the Annual Meeting.

4.4.3. *Nominations.* Nominations may be made from the floor at the Annual Meeting.

4.4.4. *Voting.* Voting shall take place at the Annual Meeting. If there is only one candidate for any office, the presiding officer may conduct that office's election by voice vote. Otherwise, the election shall be by ballot.

4.4.5. *Tallying the Votes.* A Tellers Committee of three Members shall verify the voters' register before tallying the votes. The candidate receiving the greatest number of votes for an office is elected. In the event of a tie, Members shall vote again until one candidate wins.

4.5. Removal. The Board may remove a Director from office for nonperformance of duties.

4.6. Vacancies. If the office of a Director, except for the President, is vacated, the unexpired term shall be filled by appointment by the President with Board approval. If the office of President is vacated, the unexpired term shall be filled by appointment by the Board with the Vice President presiding. Block Representative appointees shall be from the block office vacated.

5. Committees

Committee Chairmen and other members shall be appointed by the President and approved by the Board. The President shall be an ex officio member of all committees except the Nominating Committee.

6. Meetings

6.1. Association Meetings.

6.1.1. *Annual Meeting.* An Annual Meeting shall be held during the last two weeks of January. A report of the Association's activities and financial status shall be made, the Annual Budget presented and the election of Directors held.

6.1.2. *Special Meetings.* Special Association Meetings may be called by the President, the Board or at least thirteen Members for discussing and acting on important business.

6.1.3. *Proxies.* Any Member who will be absent from an Association meeting may appoint a proxy to represent them at the meeting; the appointment must be designated in a written document signed by the Member and delivered to the Secretary prior to the meeting.

6.1.4. *Quorum.* When a vote of the Members is required at any Association meeting, a quorum shall consist of 25 Members, including proxies. If a quorum is not present, the Board may conduct a vote by ballot mailed or otherwise delivered to the Members; the Members shall be given a minimum of three working days to vote and return their ballot to the Secretary. A majority vote of the ballots returned shall decide the issue.

6.1.5. *Notice.* Notice of Association meetings shall be mailed or otherwise delivered to all Members by the Secretary at least 10 days in advance and shall state the business matters to be considered.

6.2. Board Meetings.

6.2.1. *Regular Meetings.* There shall be a minimum of six Regular Board Meetings scheduled each year. Members may attend board meetings and may be allowed the privilege of the floor.

6.2.2. *Special Meetings.* Special Board Meetings may be called at any time by the President or three other Directors for discussing and acting on important business.

6.2.3. *Alternates.* A fully informed alternate (**Alternate**) may be selected by any Director unable to attend a meeting. The nonattending Director must notify the President, in writing, of the selection. The Alternate shall be a Member, and in the case of a Block Representative, a resident of the block represented. The Alternate shall have all the rights and privileges of a Director for that meeting.

6.2.4. *Quorum.* A total of eight Directors and Alternates shall constitute a quorum. Each Director and each Alternate present at a Board meeting shall have one vote; a majority of those present and voting shall decide an issue.

6.2.5. *Notice.* Notice of Board meetings shall be given to all Directors at least one day in advance and shall state the business matters to be considered.

6.3. Agenda. The agenda for Board and Association meetings shall include approval of the minutes of the last meeting; a report by the Treasurer on the financial status of the Association; and committee reports.

6.4. Parliamentary Authority. All business at Board and Association meetings shall be conducted according to Robert's Rules of Order (Newly Revised), latest edition.

7. Fiscal Policy

7.1. Fiscal Year. The Association shall operate on a calendar year basis.

7.2. Funding. The Board shall annually request funds from Members to meet the Association's financial needs. The requested amount shall be set by the Board and shall be the same for all Members. The Board may seek additional funds from other sources.

7.3. Borrowing. The Board shall not borrow money in the name of the Association unless approved by a majority vote of the Members at a duly called Association meeting.

7.4. Bonding. The Treasurer shall be bonded at the expense of the Association.

8. General

8.1. Governance. In the case of any conflict between the Restrictions and these Bylaws, the Restrictions shall govern.

8.2. Liability. To the maximum extent allowed by law, the Association shall indemnify Directors, committee members and other volunteers from liability relating to their actions taken in good faith in their official capacity for the Association. The Owners intend that no Director, committee member or other volunteer have personal liability for any action taken in good faith in their official capacity for the Association except for gross negligence or willful misconduct. The Board may purchase officers and directors liability insurance.

8.3. Dissolution. Upon dissolution of the Association for any reason, after collection of all debts owed to the Association and payment of all debts owed by the Association, the remaining surplus (if any) shall be given to a nonprofit organization(s) designated by the Board.

8.4. Adoption. These Bylaws shall replace any and all previously adopted constitutions, bylaws and amendments, and shall be considered officially adopted if they are approved by a majority of those Members present at an Association meeting.