

**Denton County  
Juli Luke  
County Clerk**

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**Instrument Number: 15601**

ERecordings-RP

DECLARATION

Recorded On: February 05, 2020 10:27 AM

Number of Pages: 90

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**" Examined and Charged as Follows: "**

Total Recording: \$382.00

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**\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\***

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 15601  
Receipt Number: 20200205000156  
Recorded Date/Time: February 05, 2020 10:27 AM  
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Station: Station 8

**Record and Return To:**

Simplifile



STATE OF TEXAS  
COUNTY OF DENTON

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

Juli Luke  
County Clerk  
Denton County, TX

"This Declaration of Covenants, Conditions and Restrictions of Villages at Creekwood Homeowners Association, Inc. is being refiled as the instrument previously recorded on October 7, 2019, under Instrument No. 126473 of the Official Public Records of Denton County, Texas, omitted page 32."

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
VILLAGES AT CREEKWOOD**

STATE OF TEXAS           §  
                                  §       KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF DENTON     §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VILLAGES AT CREEKWOOD (as may be amended from time to time, the "Declaration") is made by, CTMGT Frisco 122, LLC, a Texas limited liability company ("Declarant").

**WITNESSETH:**

Declarant, as the owner of the real property described in Exhibit A, intends by recording this Declaration in the Official Public Records of Denton County, Texas, to create a general plan of development for a single-family residential planned community known or to be known as "Enclave at Creekwood", an addition to the City of Frisco, Denton County, Texas (the "Subdivision"). This Declaration provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the Property (as hereinafter defined). An integral part of the development plan is the creation of Villages at Creekwood Homeowners Association, Inc., a Texas non-profit corporation (the "Association") whose members shall be all owners of real property subject to this Declaration, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce the covenants, conditions, restrictions, and easements set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the property described in Exhibit A, and any additional property which is subjected to this Declaration in the future in accordance with Article XIV of this Declaration, shall be owned, conveyed, used, occupied and otherwise encumbered subject to this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

**ARTICLE I  
DEFINITIONS**

The terms used in this Declaration are intended to have their normal, commonly understood definitions, unless otherwise specified. In order to minimize repetition, avoid confusion, and explain key concepts, some terms are capitalized to indicate they have special definitions. Whenever used in capitalized form, those terms have the following meanings:

(a) "Applicable Law" means the statutes and public laws and ordinances in effect at the time a provision of the Governing Documents is applied and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document and are not

Denton County  
Juli Luke  
County Clerk

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Instrument Number: 126473

ERecordings-RP

DECLARATION

Recorded On: October 07, 2019 10:10 AM

Number of Pages: 88

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" Examined and Charged as Follows: "

Total Recording: \$374.00

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\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 126473  
Receipt Number: 20191007000176  
Recorded Date/Time: October 07, 2019 10:10 AM  
User: Melissa K  
Station: Station 24

**Record and Return To:**

Simplifile



STATE OF TEXAS  
COUNTY OF DENTON

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

Juli Luke  
County Clerk  
Denton County, TX

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
VILLAGES AT CREEKWOOD**

STATE OF TEXAS           §  
                                     §       KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF DENTON     §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VILLAGES AT CREEKWOOD (as may be amended from time to time, the "Declaration") is made by, CTMGT Frisco 122, LLC, a Texas limited liability company ("Declarant").

**WITNESSETH:**

Declarant, as the owner of the real property described in Exhibit A, intends by recording this Declaration in the Official Public Records of Denton County, Texas, to create a general plan of development for a single-family residential planned community known or to be known as "Enclave at Creekwood", an addition to the City of Frisco, Denton County, Texas (the "Subdivision"). This Declaration provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the Property (as hereinafter defined). An integral part of the development plan is the creation of Villages at Creekwood Homeowners Association, Inc., a Texas non-profit corporation (the "Association") whose members shall be all owners of real property subject to this Declaration, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce the covenants, conditions, restrictions, and easements set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the property described in Exhibit A, and any additional property which is subjected to this Declaration in the future in accordance with Article XIV of this Declaration, shall be owned, conveyed, used, occupied and otherwise encumbered subject to this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

**ARTICLE I  
DEFINITIONS**

The terms used in this Declaration are intended to have their normal, commonly understood definitions, unless otherwise specified. In order to minimize repetition, avoid confusion, and explain key concepts, some terms are capitalized to indicate they have special definitions. Whenever used in capitalized form, those terms have the following meanings:

(a)     "Applicable Law" means the statutes and public laws and ordinances in effect at the time a provision of the Governing Documents is applied and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document and are not

intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

(b) "Architectural Control Committee" and/or "ACC" and/or "Reviewer" and/or "ARC" shall mean and refer to the architectural review body for the Property, as described in Article III. During the Declarant Control Period and up to one hundred twenty (120) days thereafter, (as defined below), the Declarant may have the sole right to appoint and remove members of the ACC in accordance with the terms of Section 3.1 hereof.

(c) "Assessments" shall have the meaning ascribed to such terms in Section 10.1 below.

(d) "Association" shall mean and refer to Villages at Creekwood Homeowners Association, Inc., a Texas non-profit corporation, and which shall have the right to enforce this Declaration.

(e) "Board of Directors" or "Board" shall mean and refer to the body selected as provided in the Bylaws, being responsible for the general governance and administration of the Association and this Declaration. The initial Board shall be those individuals set forth in the Certificate of Formation for the Association. During the Declarant Control Period, Declarant has the sole right to appoint and remove all Directors to the Board, provided that prior to the date which is the earlier of (i) one hundred-twenty (120) days after seventy-five (75%) of the total number of Lots to be developed within the Property hereunder have been sold to non-Declarant Owners, or (ii) ten (10) years from the date on which the Declaration is recorded, at least 1/3 of the directors serving on the Board shall be person(s) elected by a majority vote of Class A Members at a meeting of the members at which quorum is present, as set forth in the Bylaws of the Association. Each Director, other than Directors appointed by Declarant, shall be a Member and resident, or in the case of corporate or partnership ownership of a Lot, a duly authorized agent or representative of the corporate or partnership Owner. The corporate, or partnership Owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors. Two Members of the same household may not hold office at the same time.

(f) "Builder" shall mean and refer to any person or entity who has acquired a Lot or Lots for the purpose of constructing a residence thereon for later sale to consumers.

(g) "Bylaws" shall mean and refer to the Bylaws of Villages at Creekwood Homeowners Association, Inc., approved by the Board of Directors, as may be amended from time to time.

(h) "City" means the City of Frisco, Texas.

(i) "Common Properties" shall mean all real property (including improvements thereon) now or hereafter owned, leased or controlled by the Association, or to which the Association holds possessory or use rights, for the common use and enjoyment of the Owners (hereinafter defined) including, but not limited to such property which may be: (i) conveyed to the Association in fee simple title, (ii) leased to the Association, (iii) landscape or maintenance easements granted or dedicated to the Association by plat or other written instrument, (iv) retention

ponds within the Property, (v) the drainage easements located along the rear of certain Lots and connecting to drainage improvements within any retention or drainage facilities within the Property or adjacent Property, and (vi) any other real property or improvement the Association, at the sole discretion of the Board, decides to maintain. The Common Properties shall include any and all fixtures and improvements on the land constituting common areas, including, without limitation, landscaping, buffering, screening, irrigation, and associated improvements that are Common Properties next to public thoroughfares. According to preliminary plat and therefore, subject to change, Lots 1-8, 10-11 of Block X are open space Lots and are to be owned and maintained by the Association. These Lots are "non-buildable" and for landscape and sidewalk purposes only. According to preliminary plat and therefore, subject to change proposed screening wall shall be owned and maintained by the Association. Private wall maintenance easements are dedicated to the Association for this purpose. **The Declarant is under no obligation to construct or provide common elements or amenities. Membership in the Association and payment of Assessments are mandatory and not contingent upon the provision of or construction of any common element or amenity. Provisions for Declarant vary, see Article X, Section 10.18.**

(j) "Community-Wide Standard" shall mean the standard of conduct, maintenance and appearance, including landscaping, generally prevailing throughout the Property or the minimum standards established pursuant to the Design Guidelines, Rules and Board resolutions, whichever is the highest standard. **The Community Wide Standard will actively be enforced.** Declarant initially shall establish such standard. The Association, through its Board, shall ensure that the Community-Wide Standard established by the Declaration for the Property shall continue after the termination or expiration of the Class B membership. The Community-Wide Standard may contain objective elements, such as specific common area or elements, lawn or house maintenance requirements, and subjective elements, such as matters subject to the Board's discretion and may be used in conjunction with other rules by the ACC when reviewing a modification application or on its own as a stand-alone rule. **The Community-Wide Standard may or may not be in writing and is subject to notice and violation in the event any Owner fails to uphold the Community-Wide Standard.** The Community-Wide Standard may evolve as development progresses and as the Property changes. The Community-Wide Standard shall not fall below the level established for the Property as of the date the Class B membership terminates or expires.

(k) "County" shall mean and refer to Denton County, Texas.

(l) "Declarant" shall mean and refer to not only CTMGT Frisco 122, LLC, a Texas limited liability company, but also any successor, alternate or additional Declarant as appointed by CTMGT Frisco 122, LLC, as successor, alternate or additional Declarant by written instrument, filed of record in the office of the County Clerk, specifically setting forth that such successor, alternate or additional Declarant is to have, in whole or in part, together with CTMGT Frisco 122, LLC, the Declarant rights, duties, obligations and responsibilities for all or a specific portion or Phase of the Property. The term "Declarant" shall not include any person or entity that purchases a Lot from Declarant unless such purchaser is specifically assigned, by a separate recorded instrument, some or all of the Declarant rights under this Declaration as to the conveyed property.

(m) "Declarant Control Period" means the period of time commencing on the date of this Declaration and continuing through and including the later of (i) the date on which Declarant no longer owns any portion of the Property, or (ii) the date which is twenty-five (25) years after recordation of this Declaration in the Official Public Records of Denton County, Texas, or (iii) the date of recording in the Official Public Records of Denton County, Texas, of a notice signed by the Declarant terminating the Declarant Control Period.

(n) "Design Guidelines" shall mean and refer to the design standards and guidelines adopted by the Declarant, as may be amended in accordance with Article III, representing the minimum specifications for the construction of all residences, additions to such residences, and other improvements associated with each residence including, without limitation, other structures or improvements located on a residential Lot, and the minimum requirements for landscaping to be installed and maintained on each Lot. The Design Guidelines are an integral part of this Declaration and the development plan of the Subdivision. The initial Design Guidelines are attached hereto as Exhibit C, and may be amended by the Declarant at any time and from time to time during the Development Period, and thereafter by the ACC. The Design Guidelines may not be modified or amended during the Declarant Control Period by any person or entity other than Declarant. Thereafter, the ACC shall have the right to adopt, amend, or rescind the Design Guidelines or any part thereof upon a majority vote of the ACC. All Builders and prospective Owners or those desirous of constructing a residence on a Lot are strongly encouraged to obtain a current copy of the Design Guidelines prior to preparing plans and specifications for submission to the Architectural Control Committee for approval.

(o) "Final Plat" shall mean, initially, the map or plat of the Subdivision recorded in the Plat Records of Denton County, Texas, and any future recorded subdivision maps or plats covering any portion of the Property or additional real property made subject to this Declaration, as such Final Plats may be amended from time to time.

(p) "Governing Documents" means, singly or collectively as the case may be, this Declaration, the Final Plat, the Bylaws, the Association's certificate of formation, and the Rules of the Association, as any of these may be amended from time to time. An Exhibit B, exhibit, schedule, or certification accompanying a Governing Document is a part of that Governing Document. All Governing Documents are to be recorded in every county in which all or a portion of the Property is located. The Governing Documents are Dedicatory Instruments as defined in Texas Property Code Section 202. Copies of the Association's Certificate of Formation, organizational consent of the initial directors, and Bylaws are attached hereto as Exhibit D.

(q) "Lot" shall mean and refer to any one (1) of the enumerated plots or tracts of land shown upon a Final Plat, and "Lots" shall mean and refer to more than one (1) of same; provided, however, Common Properties shall in no event be treated as "Lot" for purposes of this Declaration, and are hereby specifically excluded from the term "Lot" as used hereunder.

(r) "Managing Agent" shall mean the professional property management company engaged by Declarant or the Association to perform the daily management, administrative and operations of the Declarant or the Association hereunder. The Managing Agent may and likely will have fees for services provided. Any and all fees charged by the Managing Agent for services

provided to Declarant or the Association shall be reimbursed through Assessments levied hereunder or fees collected.

(s) "Member" shall mean and refer to a member of the Association, as described in Article VIII.

(t) "Owner" shall mean and refer to each and every person or business entity (whether one or more), including Declarant (so long as applicable), that is a record owner of a fee or undivided fee interest in any Lot; provided, however, that (i) the term "Owner" or "Owners" shall not include any person or entity who holds a bona fide lien or interest in a Lot as security merely for the performance of an obligation (specifically including, but not limited to, any mortgagee or trustee under a mortgage or deed of trust) unless and until such mortgagee, beneficiary or trustee has acquired title to such Lot pursuant to foreclosure or any proceeding in lieu thereof; and (ii) with respect to any matter requiring the vote, consent, approval or other action of an Owner, each Lot shall be entitled to only one (1) vote except as provided for in Section 8.2 and Section 15.6 herein.

(u) "Phase" shall mean and refer to each separately developed residential area or addition as set forth and more fully described on a Final Plat depicting real property that has been subjected to the Declaration.

(v) "Subdivision" or "Property" shall mean and refer to the real property described on Exhibit A, any improvements now or hereafter situated thereon, and any and all additional real property (and the improvements thereon) which Declarant hereafter subjects to this Declaration, in accordance with Article XIV hereof.

(w) "Rules" means rules and regulations of the Association adopted in accordance with the Governing Documents or Applicable Law. The initial Rules may be adopted by Declarant for the benefit of the Association and Declarant may, from time to time, amend rules and regulations as it is deemed necessary during the Declarant Control Period. No Rules may be modified during the Declarant Control Period without the prior written approval of Declarant. Thereafter, the Board of Directors shall have the right to adopt, amend, or rescind rules and regulations by way of resolution of the Board upon a majority vote of the Board.

(x) "Supplemental Declaration" shall mean a recorded instrument which accomplishes one or more of the following purposes: (i) subjects' additional real property to this Declaration, or (ii) imposes, expressly or by reference, additional restrictions, covenants, easements and/or rights and obligations on the land described.

## **ARTICLE II CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS**

### **Section 2.1   Residential Use.**

The Property shall be used for single-family residential purposes and home office only. No building or other structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family residence per Lot, which residence may not exceed three



(3) stories in height, and a private garage as provided below. Any building or structure to be placed or constructed on a Lot is subject to approval in writing by the Architectural Control Committee under Article III.

## Section 2.2 Single-Family Use.

Each residence may be occupied only by persons living and cooking together as a single housekeeping unit, together with any household employees. Except for families consisting of persons related by blood, adoption, or marriage, no more than two persons per bedroom may occupy the same dwelling on a regular and consistent basis.

Section 2.2.1 Leasing. Owners of not more than ten percent (10%) of all residences located within the Subdivision may lease their residences to tenants pursuant to the following: Owners who rent or lease their residence are required to execute a written lease agreement, signed by the tenant and a copy provided to the Association prior to the tenant's possession of the residence. **During the Declarant Control Period this section shall not be enforceable without the express written consent of the Declarant. Lots sold by Declarant or Builders during the Declarant Control Period are perpetually excluded from the leasing rules and regulations and may not be counted as part of the ten percent (10%) even after the Declarant Control Period ends so long as the initial purchaser from the Builder remains the legal Owner of the home. If Owner sells or transfers title to the property, the exclusion protection provided herein becomes null and void and the new Owner of the home shall be subject to the leasing rules and regulations.** DECLARANT MAY AMEND OR RESCIND THIS RULE AT ANY TIME DURING THE DECLARANT CONTROL PERIOD. This Section may not be amended during the Declarant Control Period except by Declarant who may, at its sole discretion, choose to amend or terminate this section in its entirety.

The lease shall contain, at a minimum, the following:

- a. *Term of Lease.* Initial term of the lease shall not be less than one (1) year.
- b. *Entire Residence.* The property leased includes the entire residence.
- c. *Single Family.* Lease is restricted to single family per Section 2.2 above. Owner shall provide to the Association or its Managing Agent the names and contact information for tenants.
- d. *Abide by Rules.* The Owner must make available to the tenant copies of the CCR's, Rules and Regulations and all amendments thereto. Tenant must agree to abide by all Association rules and must acknowledge that failure to do so may constitute a default under the lease terms and agreement. Owner must obtain a signed acknowledgment from the tenant that this section of the CCR's has been explained in detail. The Tenant shall not be allowed access to any secured areas of the Association's website or other official social media platforms. Owner shall not allow tenant to use their secure log in information to access any secured platform established for homeowner use only or owned and/or operated by the Association or its Managing Agent.
- e. *Assignment.* No assignment or sub leasing is allowed.
- f. *Insurance.* Tenant must carry renter's insurance.

- g. *Maintenance; Violation.* Owner shall be responsible at all times for his tenant and the maintenance and upkeep of the home and lot. Should the tenant violate a rule and a violation notice is sent, the Owner shall be responsible for ensuring the tenant complies with the Rules and the violation noted is immediately abated. Should a fine for non-compliance result, the Owner shall be responsible for payment to the Association for all fines or any monetary expense the Association may incur for the enforcement and abatement of a violation.

#### Section 2.3 Garage Required.

Each residence shall have an enclosed garage and shall conform to the requirements set forth in the Design Guidelines. Where a J-Swing garage is not utilized, the face of the garage shall be set back a minimum of twenty-five (25) feet from the property line. The garage shall conform in design and materials with the main structure. No garage shall be used as a living quarters notwithstanding, this section shall not apply to the Declarant, Developer or Builders model homes. Any repair, maintenance, or replacement of garage doors require the prior written approval of the Architectural Control Committee.

#### Section 2.4 Driveways.

**All driveways for alley served Lots shall access the alleys; no driveways for these Lots may access the street.** All driveways shall be surfaced with concrete; no extending or widening of the driveway is allowed without the prior written approval of the ACC. No painting or staining of the driveway is allowed without the prior written approval of the ACC.

#### Section 2.5 Uses Specifically Prohibited.

- (a) No temporary or permanent dwelling, shop, storage building, trailer or mobile home of any kind or any improvement of a temporary or permanent character shall be permitted on any Lot without the express written consent of the Declarant or the Reviewer. At the Declarant's or Board of Directors sole discretion, the following may be allowed upon written consent: (i) children's playhouses and play sets, dog houses, greenhouses, small gazebos, and buildings for storage of lawn maintenance equipment, which may be placed on a Lot subject to prior written approval of the Reviewer. All structures are subject to approval in accordance with Article III and the Community Wide Standard. No part of any such structure shall be visible from the front of the home or street. Any variance to this rule requires a variance which must be issued by the Declarant or the ACC. As a general rule, no structure should be more than two feet (2') over the top of the fence line. The Builder or a contractor may have temporary improvements (such as a sales office and/or construction trailer) on a given Lot during construction of the residence on that Lot or on a different Lot as agreed to between the Builder or contractor and Declarant and/or as otherwise set out in the Design Guidelines. No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to

be erected. No materials may be stored in the street and no work or construction vehicles may ever block driveways or mailboxes.

*Portable basketball goals shall be allowed with WRITTEN APPROVAL of the reviewer only. Permanent basketball goals of any kind are prohibited without the express written permission of the ACC. Installation of a permanent basketball goal without the required written permission of the ACC may result in a demand for removal and/or a fine for non-compliance up to \$25.00 per day for every day the violation continues. Portable basketball goals may be placed on the driveway only when in use or located to the back of the home when sufficient playing area and/or surface is available; no portable basketball goal or any other sports play equipment such as but, not limited to soccer, skate board ramps, goals or nets of any kind, and other play equipment of any type or kind may be placed or played in the street or located in a right of way or the area between the sidewalk and street. Whenever possible, portable basketball goals must be stored out of public view when not in use and must be kept in good repair at all times. Basketball goals with a crank allowing the pole to be lowered when not in use is preferred and goals of this quality will not be required to be moved when not in use as long as the goal is cranked down. No unsightly weights such as tires, sand bags, rocks, or other materials may be used. The Declarant and the Board of Directors reserves the right to require the removal of a portable basketball goal or any other play equipment when use of same is in direct violation of this Declaration, Bylaws, or Rules and Regulations or if after written notice the Owner fails or refuses to make the required improvements or repairs. At the sole cost and expense of the Owner, the Board may instruct the removal of any goal or abandoned play equipment or other items left unattended in the street or which may create a safety hazard for pedestrians by blocking sidewalks, walkways, trails, or drivers of vehicles due to items left in the street, or interferes with the safety of bike riders. Any items placed or left in an unauthorized area such as a Common Area without written permission is subject to removal by the Board at the Owners sole expense. The Board is under no obligation to attempt to identify ownership of abandoned property and may charge a storage fee, if stored, to an Owner who wishes to reclaim property left unattended or abandoned.*

(b) Except as otherwise provided in this Section, the vehicles of any resident living or residing within a home shall have restricted parking on the street. *Parking on the street is intended for short term parking to include but not limited to guest parking, deliveries, service providers, and passenger pick up and drop off.* Violations for street parking may include towing of an unauthorized vehicle at the Owner's expense. Vehicles parked on the street without being moved for more than twenty-four hours shall be considered long term parking and subject to the enforcement provisions as set forth in this Declaration. Variances for street parking may be issued upon written request from time to time at the sole discretion of the Declarant during the Declarant Control Period and thereafter by the Board of Directors. On street parking, enforcement, and notices of violation may be addressed on a case by case basis at the sole discretion of the Board. Vehicles of residents living or residing in the home must use the driveway or garage. Each Lot shall be limited to a maximum of four vehicles unless approved in writing by the Reviewer. Except as provided below, the following vehicles may not be parked on any street within Subdivision: recreational vehicle including, but not limited to, boats, jet skis, and other similar sports related or recreational vehicles or equipment, mobile homes, trailers, campers, stored vehicles, inoperable vehicles, unlicensed vehicles, trucks with tonnage in excess of one (1) ton, commercial vehicles such as, but not limited to two trucks, utility trucks, and other commercial vehicles (small vehicles with advertising such as compact cars or trucks may be parked in the garage only) larger vehicles with commercial lettering or logos are prohibited unless they can be parked in a garage. "Sports utility vehicles" and "mini-vans" (as such vehicles are commonly

referred to, as determined in the Board's discretion) and pick-up trucks without commercial writing or logos shall be treated as automobiles and may be parked outside of enclosed garages. Inoperable vehicles are not allowed to be parked in the driveway or on the street at any time. The Declarant and Board of Directors reserves the right to exercise its rights by State and Local laws to enforce towing upon any vehicle that violates this section or any portion of this Declaration and/or to report violations to Frisco Code Enforcement. This Section shall not apply to parking for purposes of law enforcement, fire officials, emergency vehicles, and emergency vehicle repairs, or for construction, service, and delivery vehicles for periods necessary to perform the services or to make a delivery. Notwithstanding the above, for purposes of cleaning, loading, unloading [for a period of 24 hours prior to departure and upon return from a trip], and short-term and visitor parking, any vehicle may be parked outside of an enclosed garage temporarily and irregularly to accommodate such use. The Board, in its discretion, may enact additional rules governing such temporary, irregular use or, in the absence of specific rules, shall have discretion in determining what constitutes permissible parking under such circumstances. The Declarant and Board of Directors shall have the sole right to review and determine if a violation of this section exists or if said violation will be enforced against an Owner. As used in this Section, the term "vehicles" includes, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

(c) No vehicle of any size which transports flammable or explosive cargo may be kept or parked on the Property at any time, except for use by or on behalf of Declarant in connection with the development of the Property or by a builder or contractor in connection with the construction of improvements on a Lot. No oil changes, mechanic work, or other such actions may be performed on the driveway or in the street.

(d) No animals or livestock shall be raised, bred or kept on the Property for commercial purposes or for food. Dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family; however, those pets which are permitted to roam free, or, in the sole discretion of the Board and to the extent permitted under applicable law, constitute a nuisance to the occupants of other Lots may issue an order to an Owner that such pet be removed upon request of the Board; provided, in no event shall the Board or Association be required to remove any pet from the Subdivision. If an Owner has failed to remove its pet from the Subdivision pursuant to any order or removal issued by the Board within three (3) days after such order is delivered to an Owner, such Owner shall be subject to fines hereunder and the Board may proceed with efforts to immediately remove the pet that is the subject to the order from the Subdivision. Notwithstanding anything contained herein to the contrary, the Board in its sole discretion and without incurring any further duty or obligation to owners and occupants within the Property, may decide to take no action and refer complaining parties to the appropriate municipal or governmental authorities for handling and final disposition. **IF ANY ANIMAL OR PET IS A NUISANCE IN THE SUBDIVISION, HOMEOWNERS ARE ENCOURAGED TO CONTACT THEIR LOCAL ANIMAL CONTROL AUTHORITY FOR ASSISTANCE.** The Association shall have no liability or obligation to ensure removal of a pet from the Subdivision that is a nuisance and cannot be held liable or responsible if any enforcement actions taken by the Association under this Section 2.5(d) are unsuccessful. **EACH OWNER BY ACCEPTANCE OF TITLE TO ITS LOT HEREBY RELEASES AND WAIVES THE ASSOCIATION, DECLARANT, THE BOARD AND/OR ITS MANAGING AGENT AND THEIR RESPECTIVE MEMBERS, EMPLOYEES, DESIGNEES, ADMINISTRATORS, INSPECTORS, CONTRACTORS, AND AGENTS, AND AGREES TO INDEMNIFY AND DEFEND SAME AND HOLD THEM HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, LOSS, DAMAGE, COSTS AND**

EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF ANY ACTIONS OR ATTACK BY OWNER'S PET OR BY ANY PET RESIDING ON AN OWNER'S LOT WITHIN THE SUBDIVISION. ALL BREEDS OF PETS THAT ARE DETERMINED TO BE AGGRESSIVE OR VICIOUS BREEDS BY THE BOARD OR ANY APPLICABLE GOVERNMENTAL AUTHORITY (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PIT BULLS OR ROTTWEILERS) ARE STRICTLY PROHIBITED WITHIN THE SUBDIVISION AND ARE DEEMED TO BE A NUISANCE AND SUBJECT TO REMOVAL PROVISIONS SET FORTH HEREIN. Any Owner of a pet that attacks another person or animal is subject to a \$1,000 fine, whether or not such Owner's pet inflicted harm on a person. Pets shall be kept on a leash or otherwise confined inside a fenced area whenever outside the residence. Pets shall be registered, licensed and inoculated as required by law and must be properly tagged for identification. It is the Owner's responsibility to keep the front of their Lot clean and free of pet debris and to pick up and properly dispose of their pet's waste wherever deposited. Notwithstanding anything seemingly herein to the contrary, no more than three (3) household pets will be permitted on each Lot."

(e) No Lot or other area on the Property shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation broken or rusty equipment, disassembled or inoperative cars, other vehicles or discarded appliances and furniture. Trash, garbage or other waste shall be kept in sanitary containers and shall be kept out of public view or screened from view of the street and any adjacent Lot or Common Properties. Owners may submit modification applications for small concrete pads to the side of the home to hold containers and all such requests will be considered on a case by case basis and shall be subject to any city of Frisco regulations which may also exist notwithstanding, any such pad must be fully screened with wood fencing or live screening. Containers may be set out the evening before scheduled pickup and returned to their storage area the evening of the day of pickup. Unsightly debris and rubbish or storage of unsightly items in the front or sides of the home or on the driveways will not be allowed. *After one (1) notice of not less than five (5) days the Board shall have the right to initiate its self-help rights and enforcement as described in Article 6, Section 6.2(c) of this Declaration and/or levy a fine up to \$1,000.00 for non-compliance with this rule which shall apply to Owners and Builders at the Board's sole discretion.* All incinerators or other equipment for the storage or other disposal of such material shall be kept in clean and sanitary condition. Materials incident to construction of improvements may be stored on Lots during construction so long as construction progresses without undue delay. Builders shall be required to use commercial waste bins during the construction of residence on a Lot and keep the construction site clean and orderly.

(f) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any wall or window of a residence. All air-conditioning equipment must be installed in the rear yard, side yard or screened in a manner so as not to be seen.

(g) The erection, construction, placement or installation of any television, radio or other electronic tower, serial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcast signals or other means of communication upon a Lot or upon any improvement thereon is prohibited, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Board shall be empowered to adopt rules governing the types of antennae that are permissible

hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. To the extent that reception of an acceptable signal would not be impaired or the cost of installation would not be unreasonably increased, an antenna permissible pursuant to the Declaration or the rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land-use and building regulations.

(h) No Lot or improvement thereon shall be used for commercial or manufacturing purposes of any kind other than a small home office. Nothing in this subparagraph shall prohibit a Builder's use of a residence as a sales office until such Builder's last residence on the Property is sold and closed; provided, however, each Builder is required to provide the Declarant during the Declarant Control Period, and thereafter the Association with at least ten (10) days' prior written notice of any open house showings or promotional events within the Subdivision, and in no event may any Builder use Common Properties therefore without the prior written consent of the Declarant during the Declarant Control Period, and thereafter the Association, which consent may not be unreasonably withheld. After the Declarant Control Period the Board of Directors may not prohibit or prevent Builders from holding open house or other similar events for the purpose of soliciting or encouraging sales. The Board may, within reason, limit construction hours but, may not limit the days of construction. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as a small home office, tutoring or giving lessons such as art or music, so long as such activities are consistent with the residential character of the Property, do not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Property, as determined in the Board's discretion, and do not materially increase the number of cars parked on the street.

(i) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and six feet (6') above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within ten feet (10') from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. Generally, height limitations for hedges or shrubs are not monitored when located in the back-yard lot of a residence notwithstanding, if a hedge, shrub, or tree is located within a back-yard lot and its location obstructs sight lines the Declarant or Board of Directors may require the trimming or removal of the hedge, shrub, or tree if it is deemed necessary.

(j) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment which specifically conform with the Design Guidelines and the requirements of Section 2.5 (a) herein, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.

(k) No sign of any kind with the exception of School Spirit signs or other similar signs displaying School related activities shall be displayed to the public view on any Lot, except: (i) political signs which may be placed on the Lot no earlier than the date which is ninety (90) days before the election to which the sign relates and which must be removed within ten (10) days after the election for which such sign is displayed; (ii) one (1) professional security service sign of not more than one square foot; (iii) one (1) sign of not more than five square feet advertising the property for rent during any period that the Lot actually is for rent; or (iv) signs used by a Builder to advertise the Property during the construction and sales period, each of which shall, in any event, comply with all statutes, laws or ordinances governing same. Owners may not display a sign advertising the home for sale during the first year after purchase. Only the Declarant, during the Declarant Control Period may override this rule and thereafter, the Board. The Board of Directors or its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or otherwise in connection with such removal. Signs must be aesthetically pleasing in appearance. The Declarant, Board of Directors, or its Agents have sole discretion as to size, style, appearance of school spirit and other signs which may be displayed.

(l) The drying of clothes in public view is prohibited. Clothes lines are prohibited.

(m) Wood used for fireplace, barbeque, or other use must be stacked neatly and screened from public view. The Owner is responsible for ensuring that such wood stack is kept free of rodents and insects.

(n) The use of the name of the Association or the Subdivision, or any variation thereof, in any capacity without the express written consent of the Declarant during the Declarant Control Period, and thereafter the Board, is strictly prohibited. Additionally, the use of any logo adopted by the Association or the Subdivision, or use of any photographs of the entryway signage or other Subdivision signs or monuments or Common Properties without the express written consent of the Declarant during the Declarant Control Period, and thereafter the Board, is strictly prohibited.

(o) No Owner shall perform, fail to perform, or permit anything to be done or not done on such Owner's Lot which would violate any laws, statutes, ordinances or regulations of any kind or character. An Owner's lot and residence must be kept in good repair at all times. No Owner shall perform or permit anything to be done that can be considered a nuisance or safety hazard to the surrounding neighbors or the community. If an Owner leases his home, the occupant / tenant shall be required to adhere to all governing documents, rules and regulations. It shall be the responsibility of the Owner to ensure the occupant / tenant is aware of all restrictions, rules and regulations. Violation infractions committed by an occupant / tenant, resident, guest or invitee will be the responsibility of the Owner to cure / abate. If a fine for non-compliance is levied, the Owner will be responsible for the payment in full of all fines, self-help remedies, or cost of repairs which may be incurred by the Association. The Declarant, Board of Directors, Architectural Control Committee, and Compliance Inspectors of the Association shall have the right to make determinations that a violation exists based solely on aesthetics, uniformity or harmony with community wide standards desired to be kept within the community.

(p) **Fireworks are strictly prohibited.** Use of fireworks in the Subdivision is subject to a monetary fine of \$1,000.00 for each violation. A sworn affidavit signed by a witness with legal capacity made under penalty of perjury attesting to the violation and specifying the date and approximate time of such violation which is received by the Association shall be sufficient evidence of such violation. The Association, under a controlled environment, as a community function may hold events or allow events with fireworks.

#### Section 2.6 Minimum Floor Area.

The total air-conditioned living area of the main residential structure constructed on each Lot, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall not be less than 1,800 square feet and shall be in accordance with the City of Frisco Zoning and Subdivision Regulations.

#### Section 2.7 Fences and Walls.

Any fence or wall must be constructed of brick, wood, wrought iron or other material approved by the Declarant or the Reviewer. No vinyl or chain link fences are permitted except on the Common Properties or any school property. No fence or wall shall be permitted to extend nearer to any street than within five feet (5') of the front of any residence. However, all side yard fencing on corner Lots shall run parallel to the curb and may be placed no nearer than five feet (5') inside the side Lot line and shall not extend beyond a point of five feet (5') behind the front of the residence on that side. Fences or walls erected by Declarant shall become the property of the Owner of the Lot on which the same are erected and as such shall be maintained and repaired by such Owner except as is provided in Article IV and Article IX. In the event the Association performs any routine maintenance or repairs to the wall, the Association may, so long as there is no rule or regulation contrary to this one, bill the expense thereof back to the Owner. Any fence or portion thereof that faces a public street shall be so constructed so that at all times all structural members and posts will be on the side of the fence facing away from the street so that they are not visible from any street. Fences facing streets and major thoroughfares are required to be stained and kept in good repair at all times. No portion of any fence shall extend more than six feet (6') in height without written ACC approval.

#### Section 2.8 Building Materials.

The building materials to be used for each residence and other structure must conform to the requirements set out in the Design Guidelines. Allowed roofing materials shall be set forth exclusively in the Design Guidelines. The color of roofing shall be consistent throughout the Subdivision and shall otherwise conform to the Design Guidelines.

Section 2.9 Mailboxes and Address Blocks. Mailboxes shall be standardized throughout Subdivision and shall be constructed in accordance with the Design Guidelines. An address block shall be installed on the front facade of each residence and shall be of cast stone. If cluster mailboxes are used in this subdivision and there is damage sustained which results in the repair or replacement of the cluster box unit the Association shall attempt to identify the person or persons responsible and shall make every effort to obtain the full cost of repair or replacement from that



entity or individual notwithstanding, should the Association not be able to identify the person or persons responsible, the costs of repairs or replacement of a cluster mailbox shall be borne as an uniform Individual Special Assessment by each Owner to whom the cluster mailbox serves as the receptacle for the receipt of U.S. mail or packages.

#### Section 2.10 Landscaping.

Each Builder of a residence upon each Lot shall, upon or before the first occupancy of a house, sod grass in the front and side yards, plant the minimum size and number of trees and minimum size and number of shrubs in the front yard against the foundation of the house as required by the City or the Design Guidelines. Thereafter, each Owner of a Lot shall have the responsibility to properly maintain such trees and landscaping and, if necessary, shall replace such trees or landscaping in accordance with the Design Guidelines. The Declarant and/or the Association shall have the right but not the obligation, to be exercised at its sole option, to remove and replace dead trees and landscaping and charge the costs thereof to the Owner's account as an Individual Special Assessments under Section 10.7 below.

#### Section 2.11 Design Guidelines.

In addition to any requirements set forth in this Declaration, all Owners are required to comply with the Design Guidelines in the construction of improvements within the Property and the installation, maintenance and replacement of trees and landscaping within the Property.

#### Section 2.12 ZONING ORDINANCE.

The Property and Lots may be subject to a planned development ordinance, or other zoning or use ordinance adopted by the City with respect to the Property (herein referred to as the "City Ordinance"), as may be recorded or to be recorded in the Official Public Records, of Denton County, Texas. No use shall be permitted on the Property which is not allowed under the City Ordinance or other Applicable Laws either already adopted or as may be adopted by the City or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration, the City Ordinance (if any) and with any and all other laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments, and other agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. **IN SOME INSTANCES, REQUIREMENTS UNDER THE CITY ORDINANCE OR OTHER GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH REQUIREMENTS UNDER THE CITY ORDINANCE OR OTHER GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE CITY ORDINANCE OR GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH THE CITY ORDINANCE OR OTHER MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A CITY ORDINANCE OR ANY GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS**

**DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL.**

All Lots shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided. The City reserves the right in the event of non-compliance to perform the work or needed maintenance to any Lot or Common Properties in order to bring it into compliance with City restrictions and applicable restrictions as set forth in this Declaration. Any such work performed by the City will be billed back to the responsible party and shall be due and payable by the Owner upon receipt, and such amounts due to the City may be assessed and levied hereunder by the City in the same manner as Special Assessments or Individual Special Assessments hereunder, and shall be secured by the Assessment Lien created under Section 10.1 hereof.

**ARTICLE III  
ARCHITECTURAL CONTROL**

**Section 3.1 Review Authority.**

(a) General. Declarant and the Association will, in all likelihood engage the services of third-party professionals including architects, engineers, or other persons to perform and administer the submission, review and inspection process which may be required or necessary under this Article. Declarant reserves the right to implement and enforce additional application, permitting, review, testing and inspection requirements, procedures, and fees not contained herein relating to national or uniform codes pertaining to building, electrical, plumbing and any other aspect of construction or development as deemed necessary by Declarant.

**MODIFICATIONS TO THE EXTERIOR OF A HOME OR LOT IS PROHIBITED WITHOUT THE PRIOR WRITTEN PERMISSION OF THE ARCHITECTURAL CONTROL COMMITTEE ("ACC"). MINOR MAINTENANCE SUCH AS RE-PAINTING TRIM OR GUTTERS ON A HOME AS LONG AS OWNER IS USING THE SAME COLOR AS THAT ALREADY EXISTING ON THE HOME SHALL NOT CONSTITUTE A VIOLATION AND DOES NOT REQUIRE ACC APPROVAL. VIOLATIONS FOR NON-SUBMITTAL OF A MODIFICATION APPLICATION OR A VIOLATION OF NON-CONFORMANCE SHALL CARRY A FINE UP TO \$1,000.00, DEPENDING UPON THE NATURE AND SEVERITY OF THE VIOLATION. AT ANY TIME, THE ASSOCIATION IS REQUIRED TO INITIATE SELF-HELP TO CORRECT A NON-CONFORMING OR UNAUTHORIZED VIOLATION ALL EXPENSES INCURRED BY THE ASSOCIATION SHALL BE LEVIED AGAINST THE OWNER, PLACED ON THE OWNER'S ACCOUNT AS A SPECIAL INDIVIDUAL ASSESSMENT AND SHALL BE SUBJECT TO COLLECTION IN THE SAME MANNER AS ASSESSMENTS.**

(b) Declarant. Until 120 days after the Declarant Control Period ends, Declarant shall have exclusive authority to administer, review and act upon all applications for architectural and other improvements within the Property, unless Declarant earlier terminates its rights in a recorded instrument. After the 120 days if there are Builder Lots remaining upon which a home must be constructed, the Declarant shall continue to issue approvals for all new construction projects. Declarant, at its sole discretion, may designate or engage one or more persons or entities to act on its behalf with respect to some or all matters coming within the purview of this Article III. In reviewing and acting upon any request for approval, Declarant or its designee(s) act solely in

Declarant's interest and owe no duty to any other person. Declarant is not required to hold meetings or keep minutes relating to its review under this Article.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other person, entity or committee, including the Architectural Control Committee. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(c) Architectural Control Committee. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ACC, shall assume jurisdiction over architectural matters. The ACC shall consist of at least three persons. Members of the ACC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. The ACC members shall be designated, shall serve, and may be removed and replaced in the Board's discretion.

For so long as Declarant owns any portion of the Property (and unless the Declarant notifies the ACC in writing to the contrary), the ACC shall notify Declarant in writing, no less than ten (10) business days prior to communicating any action (*i.e.*, approval, partial approval, or disapproval) it intends to take under this Article. A copy of the application and any additional information that Declarant may require shall accompany the notice. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any ACC action; provided, Declarant's right to veto must be exercised within ten (10) business days after it receives notice of the ACC's proposed action. The party submitting the plans for approval shall not be notified of the ACC's proposed action until after Declarant's right to veto has expired.

The Board may create and appoint subcommittees of the ACC. Subcommittees may be established to preside over particular areas of review (*e.g.*, landscape plans) and shall be governed by procedures the Board or the ACC may establish. Any subcommittee's actions are subject to review and approval by Declarant, for as long as Declarant may review the ACC's decisions, and the ACC. Notwithstanding the above, neither the ACC nor Declarant shall be obligated to review actions of any subcommittee, and the failure to act in any instance shall not be a waiver of the right to act in the future. **Unless and until such time as Declarant delegates any of its reserved rights to the ACC or Declarant's rights under this Article expire or terminate, the Association shall have no jurisdiction over architectural matters.**

(d) Reviewer. The entity having jurisdiction in a particular case, whether Declarant or its designee or the ACC, shall be referred to as the "Reviewer".

(e) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications, including the right to offer and collect expedite fees, and shall require that such fees be paid in advance. If such fees or charges, including those set forth under Section 3.3 below, are not paid in advance, the Reviewer shall have no obligation whatsoever to review any such related application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, other professionals, or Agents. The Managing Agent may charge additional fees in connection with administration of the submittal and review of applications for approval by the Reviewer. The Board may include the compensation of such persons in the Association's annual operating budget. The Association may charge a fee for review of applications if the Association leases or purchase a specialized online program that will allow Owners to submit applications online for review and approval.

### Section 3.2 Review Requirements.

No building, wall, pool or other structure of any type shall be commenced, erected, installed, placed, or substantially altered on any Lot, nor shall any full exterior painting of the residence or garage door (other than repainting a structure the same or similar color) of, exterior addition to, or substantial alteration of, such items be made until all plans and specifications and a plot plan have been submitted to and approved in writing by the Reviewer. No above ground pools are allowed.

The Reviewer is authorized and empowered to consider and review any and all aspects of construction and landscaping which may, in the reasonable opinion of the Reviewer, adversely affect the living enjoyment of one (1) or more Owners or the general value of the Property. The Reviewer shall have the right to render decisions based solely on aesthetic considerations. In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to judicial review so long as they are made in good faith and in accordance with the required procedures.

### Section 3.3 Procedure for Approval.

PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION BY ANY PERSON OR ENTITY, THE BUILDER SHALL OBTAIN FROM THE REVIEWER A BUILDING PERMIT AND SHALL PAY, IN ADVANCE, A RELATED INSPECTION FEE AND FEE OWING OR TO BE OWED IN THE AMOUNT OF \$150.00 OR AS DETERMINED BY THE REVIEWER. THIS REQUIREMENT NOT ONLY APPLIES TO ORIGINAL CONSTRUCTION BUT TO POOL INSTALLATIONS, MODIFICATIONS OR ADDITIONS TO EXISTING STRUCTURES OF IMPROVEMENTS. FAILURE TO OBTAIN SUCH PERMIT OR PAY SUCH FEES PRIOR TO INITIATION OF CONSTRUCTION SHALL BE CAUSE FOR THE REVIEWER OR THE ASSOCIATION TO REQUEST AND OBTAIN EMERGENCY TEMPORARY RELIEF TO RESTRAIN ALL ASPECTS OF CONSTRUCTION. FEES ARE

**NON-REFUNDABLE UNLESS BUILDER OR SUBMITTER CANCELS SUBMISSION  
WITHIN FIVE (5) DAYS OF RECEIPT BY REVIEWER.**

In addition to the foregoing requirement, final plans and specifications shall be submitted in duplicate by mail, e-mail, or hand delivered to the Reviewer. The Reviewer, Declarant or Association is not responsible for lost or delayed mail. The Reviewer, Declarant or Association may allow plans and specifications to be delivered through electronic or web-based submissions at their sole discretion. Any submission other than web-based submission shall require Owner to submit at least one (1) set of plans or specifications with original signature(s) of the Owner(s) included for the Association's files. For web-based submissions, as long as the appropriate system for verification and confirmation of submission is in place an e-signature may be accepted so long as doing so does not conflict with any Texas State Property Code regulation which may exist at the time of recording of this Declaration or as may be amended from time to time.

The plans and specifications shall show the nature, kind, shape, height, materials and location of all landscaping and improvements. The application shall specify in writing any requested variances from the requirements set forth in this Declaration, the Design Guidelines or any Community-Wide Standard. The Reviewer is authorized to request the submission of samples of proposed construction materials and such other information as they reasonably deem necessary to make their determination. At such time as the plans and specifications meet the approval of the Reviewer, one complete set of plans and specifications will be retained by the Association, for up to three (3) years only, and the other complete set of plans or a copy of same shall be marked "Approved", signed by a representative of the Reviewer and returned to the Lot Owner or his designated representative. If disapproved by the Reviewer, one set of such plans or a copy of same shall be returned marked "Disapproved" and shall be accompanied by a reasonable statement of the reasons for disapproval, which statement shall be signed by a representative of the Reviewer. Any modification of the approved set of plans and specifications must again be submitted to the Reviewer for its approval. The Reviewer's approval or disapproval, as required herein, shall be in writing. **Any reliance upon a verbal approval of any plans by the Reviewer shall be wholly unjustified, at the risk of the Lot Owner and subject to any subsequent or otherwise conflicting written response by the Reviewer.**

Reviewer shall approve or disapprove new construction plans from a Builder within fourteen (14) business days excluding weekends and holidays. All other submissions shall be approved or disapproved within forty-five (45) days excluding weekends and holidays after the date of submission. If Reviewer fails to return a decision on submissions other than Builders new construction submissions, the application shall be deemed to have been disapproved. Absolutely no verbal submissions or approvals are allowed. **If Reviewer fails to return a decision on Builders new construction plan within fourteen (14) business days, the submission shall be deemed to have been approved notwithstanding, the Builder shall be held fully liable for all compliance requirements with this Declaration, Design Guidelines, and all City Zoning Ordinances that may apply.** Any Builder who is constructing residences on multiple Lots shall have the option of submitting a master set of final plans and specifications for all of the residences it intends to construct within the Property to the Reviewer in accordance with the provisions of this paragraph. Once the master set of plans has been approved, the Builder shall be allowed to construct residences in accordance with such approved plans and no further

submittals shall be required unless material deviations have been made to such approved plans. A plot plan providing the lot, block, and physical address will be required.

The Reviewer may, but is not obligated to, permit or require that plans be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified time period. If construction does not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action.

Also, as a part of the review process, the Reviewer may, but is under no obligation, to require that the construction of any improvement be inspected on a periodic basis prior to completion for compliance with the plans, codes adopted by the Declarant and other matters relating to the quality or method of construction. The Association may conduct such inspections or, in the alternative, it may contract with third parties for such purposes. The Owner on whose Lot the construction is taking place shall be responsible for the payment of costs relating to any such inspection. Provided a Builder is constructing residences on Lots in accordance with approved plans and the terms of this Declaration, the Reviewer shall be prohibited from interfering with a Builder's construction and completion of a residence and related improvements on a Lot.

#### Section 3.4 Standards.

**The Reviewer shall have sole discretion with respect to taste, design and all standards specified herein. Community Wide Standards, whether in writing or not may be used. One objective of the Reviewer is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built on the Property. The Reviewer shall have the authority to interpret and amend the Design Guidelines, subject to Declarant's approval for so long as Declarant or any Builder owns any portion of the Property and, thereafter, subject to the approval of the Board. The Reviewer may from time to time publish and promulgate bulletins regarding architectural standards, which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration.**

#### Section 3.5 Requests for Variance.

Upon submission of a written narrative request for same, the Reviewer may, from time to time, in its sole discretion, permit Owners and Builders to construct, erect or install improvements which are in variance from the requirements of this Declaration or which may be contained in the Design Guidelines. In any case, however, such variances shall be in basic conformity and shall blend effectively with the general architectural style and design of the community. No member of the ACC or the Board, or the Association or Declarant shall be liable to any Owner or other person claiming by, through, or on behalf of any Owner, for any claims, causes of action, or damages arising out of the granting or denial of, or other action or failure to act upon, any variance

request by any Owner or any person acting for or on behalf of any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Reviewer's right to strictly enforce the Declaration, the Design Guidelines or the against any other Owner. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Reviewer must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted.

#### Section 3.6 Liability of Reviewer.

Neither Declarant, the Board of Directors, the Architectural Control Committee, nor any of their respective members, officers, employees, designees, contractors, administrators, inspectors and agents, shall have any liability whatsoever for decisions made in accordance with this Article so long as such decisions are made in good faith and are not arbitrary or capricious. The plans or the site plan submitted to the Reviewer shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Reviewer shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, or any codes, ordinances, regulations or other laws, whether statutory or not, and whether the same relate to Lot lines, building lines, easements or any other issue. Review and approval of any plans pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every dwelling is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

**THE ASSOCIATION HEREBY UNCONDITIONALLY AND PERPETUALLY INDEMNIFIES AND HOLDS DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, AND THEIR RESPECTIVE MEMBERS, EMPLOYEES, DESIGNEES, ADMINISTRATORS, INSPECTORS, CONTRACTORS, AND AGENTS HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, LOSS, DAMAGE, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF ANY ACTIONS OR INACTIONS TAKEN HEREUNDER BY THE REVIEWER, IRRESPECTIVE OF WHETHER OR NOT THE REVIEWER, ITS EMPLOYEES, CONTRACTORS, AGENTS AND OTHER INDIVIDUALS OR ENTITIES TO OR EMPLOYED BY THE REVIEWER ACTED NEGLIGENTLY OR WITH WILLFUL MISCONDUCT.**

#### Section 3.7 Special Rights of Declarant.

Notwithstanding anything to the contrary contained herein, any Lot owned by Declarant or its successor or assign, shall not be subject to the provisions of this Article III and Declarant shall not be required to submit plans and specifications, etc. to the Architectural Control Committee nor obtain the consent, permission or approval of the Architectural Control Committee for the matters otherwise required pursuant to this Article III, and the consent, permission or approval of the Architectural Control Committee shall be deemed given for plans and specifications, plot plans and the like to be used by Declarant, or Declarant's assigns, in the construction of any residence on any Lot owned or sold to a Builder by Declarant. **DECLARANT ALSO RETAINS SPECIAL AND UNIQUE RIGHTS AND PRIVILEGES IN ARTICLE XII AND EXHIBIT B ATTACHED HERETO THAT TAKE PRECEDENCE OVER ALL OTHER ARTICLES OR SECTIONS IN THIS DECLARATION.**

## **ARTICLE IV SPECIAL FENCING AND LANDSCAPING**

### **Section 4.1 Fences, Walls and Screening Landscaping.**

Declarant and/or the Association shall have the right, but not the obligation, to erect, install, maintain, repair and/or replace fences, walls and/or screening landscaping within that portion of any Lot situated along the perimeter of the Property or on Lots adjacent to Common Properties, as shown on a Final Plat, including, without limitation, open space area for screening or buffering. Any such fence, wall or sprinkler system shall be the property of the Owner of the Lot on which such fence, wall or sprinkler system is erected or installed, subject to the easements and rights of Declarant and the Association set forth below. With respect to any fencing installed within a Lot that is adjacent to a thoroughfare, the Association shall have the exclusive right to stain the exterior of such fence facing the thoroughfare whenever, in the Board's sole and absolute discretion, it deems necessary. The Association may, at its sole discretion, choose to perform maintenance or repairs to any portion of a perimeter wall and any portion that would be the Owner's responsibility to maintain is subject to a request for reimbursement from the Association which shall be charged to the Owner's account as a special individual assessment. The Design Guidelines may contain all construction and materials requirements for the walls adjacent to the Common Properties and any thoroughfare however, in the absence of such information, it is the Declarant's or Owner's responsibility to ensure materials used comply with all city of Frisco ordinances as well as those of the Association. The Association may include costs for maintenance, repairs and/or replacement required by this Section 4.1 to be included in the expenses of the Association to be paid by levying of Annual Assessments.

### **Section 4.2 Landscaping.**

Declarant and/or the Association shall have the right to grade, plant and/or landscape and maintain, repair, replace and/or change such grading, planting and landscaping on any portion of the Property not comprising any portion of a Lot and to maintain all landscaping, buffering, screening, irrigation and associated improvements adjacent to the Subdivision along public thoroughfares as required by the City (and including without limitation, open space area for screening or buffering), without limitation whatsoever, to do all things necessary within the Property to obtain full compliance with applicable City ordinances. Per preliminary plat and therefore, subject to change, the Association shall be responsible for landscape edge maintenance along King Road, Witt Road, and Stonebrook Parkway which shall not be encumbered with utilities. Landscape edge for landscape and screening purposes only and shall be owned and maintained by the Association. The Association may include costs for maintenance, repairs, replacement and/or changes required by this Section 4.2 to be included in the expenses of the Association to be paid by levying of Annual Assessments.

### **Section 4.3 Easement.**

Declarant and the Association shall have, and hereby reserve, the right and easement to enter upon the Common Properties and those Lots which are situated along the perimeter of the Property and/or the Common Properties, as shown on a Final Plat, or the Lots adjacent to a thoroughfare, for the purpose of exercising the discretionary rights set forth in this Article IV.



Section 4.4 Declarant and the Association's Discretion.

Notwithstanding any provisions herein to the contrary, neither Declarant nor the Association shall ever be obligated to erect, install, maintain, repair or replace any fences, walls, sprinkler systems, grading, planting or landscaping on the Property.

Section 4.5 Fifteen (15) Year Limitation.

The provisions of this Article IV regarding Declarant's rights shall terminate and be of no further force and effect from and after that date which is fifteen (15) years after the recording of this Declaration. The rights of the Association shall continue throughout the term hereof.

**ARTICLE V  
LOT MAINTENANCE BY OWNERS**

Section 5.1 Lot Maintenance.

After the installation of the landscaping on a Lot by a builder, the Owner of the Lot shall thereafter maintain the yard in a sanitary and attractive manner, including adequate watering and immediate replacement of dead vegetation and trees, and shall edge the street curbs that run along the Lot boundary lines. Yards must be kept mowed, trimmed, and weeded at regular intervals so as to maintain the Lot in a neat and attractive manner. No vegetables or wild flowers shall be grown in any portion of a Lot yard that faces a street or is not screened by fencing built in accordance with the terms hereof. Grass shall not be permitted to grow to a height of greater than four (4") to six (6") inches, depending upon the type of sod, upon any Lot. Dead grass/turf and unsightly weeds must be addressed and remedied. A weed treatment program is recommended notwithstanding, if weeds become unsightly, tall, or out of control, the Owner will be required to treat for weeds in a manner that will bring the lawn into a sanitary and attractive manner. Edging around all sections of the front and side yard lawns is required. Grass and weeds may not be permitted to grow over sidewalks, drives, or curbs.

Section 5.2 Maintenance of Improvements.

Each Owner shall maintain the exterior of all buildings, garage door, fences, walls and other improvements on his Lot in good condition and repair, and shall replace worn and rotten parts, and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, down spouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate in an unattractive manner. All fences shall be kept neat, clean and in good repair at all times. Any fence which is damaged, broken, leaning, or otherwise not in good repair shall be immediately repaired. No partial fencing is allowed.

## ARTICLE VI ENFORCEMENT

### Section 6.1 Special Enforcement Rights of the Board of the Association.

In the event an Owner or an Owners guests, invitees, or tenants, fails to comply with any provision of this Declaration, the Design Guidelines, including but not limited to any requirement contained in Article V, Rules and Regulations and/or the Community Wide Standard then, prior to the Board or the Association enforcing the compliance of such failure or seeking against such Owner remedies in accordance with this Declaration, except in the event of an emergency or a situation that threatens the health, safety, and welfare of the Association, its Members, Occupants, Tenants, Guests, or Invitees; or any animal or property (or such other remedies as may be available to the Board and/or the Association at law or in equity), the Board shall first be obligated to give such Owner not less than one (1) notice of such failure and a reasonable time of not less than five (5) nor more than ten (10) days or as determined by the Board to cure said violation. If the Owner, the Owner's occupants or tenants in the event the home is leased or rented, shall not have corrected such failure within the time given, the Board of Directors shall have the right but not the obligation, to assess monetary fines and/or enter upon the Lot to bring the Lot, and any improvements thereon, into full compliance with this Declaration, the Design Guidelines, or any rules and regulations (commonly known as "Self-Help"). All costs and expenses incurred by the Association in connection with correcting any such failure by any Owner shall be borne by the Owner. If any Owner does not promptly reimburse the Association for all such costs, expenses and violation fines assessed after receipt of written request for same, the Board shall have the right to assess the Owner for same plus interest, such assessment, interest and fines being an Individual Special Assessment under the provisions of Section 10.6 below. Monetary fines may be levied in lump sums or in increments notwithstanding, there shall be a maximum fine amount of \$1,000.00 levied for each individual violation and a minimum fine of not less than \$50.00 regardless of whether the fine is levied in a lump sum or increments. Each occurrence shall constitute a new violation regardless of whether it is a repeat violation or not.

### Section 6.2 Enforcement.

In addition to but not in lieu of the enforcement rights set forth in Section 6.1, the Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with the applicable procedures set forth in any policy or procedure adopted by the Board. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

(a) **Fines.** The Board of Directors may impose reasonable monetary fines which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. Certain infractions may carry with it specific fines. The Owner shall be liable for the actions of any occupant, guest, or invitee of the Owner of such Lot. The Board of Directors may but, is not required, to provide a copy of the notice of violation to any tenant notwithstanding, the Owner shall be responsible for the abatement of a violation and payment of any fine, if applicable. The Board of Directors shall adopt a Notice and Fining Policy; Schedule of Fines.

(b) **Suspension of Rights to Use the Common Properties.** The Board of Directors may suspend any person's or entity's right to use any recreational facilities within the Common Properties; provided, however, nothing herein shall authorize the Board of Directors to limit ingress or egress to or from a Lot. Owners who lease or rent their homes shall be responsible for all occupants/tenants.

(c) **Right to Require Removal.** The Board of Directors may require an Owner, at the Owner's expense, to remove any dead tree or landscaping from an Owner's Lot and to restore or install the necessary trees or landscaping as required by the applicable City ordinances or Association Rules, upon failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the Lot, remove and cure the violation without such action being deemed a trespass and charge the costs thereof to the Owner's account as an Individual Special Assessment in accordance with Section 10.6 below.

(d) **Levy Individual Special Assessment.** The Board of Directors may levy an Individual Special Assessment in accordance with Section 10.6 as a violation fine and/or to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration or the Design Guidelines. Owners leasing or renting their homes shall be responsible for their occupants/tenants. All fines shall be the responsibility of the Owner to pay.

(e) **Lawsuit; Injunction or Damages.** The Board of Directors may bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

Failure by Declarant or the Board of Directors, to enforce any covenant, condition, agreement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to the Association's enforcement rights, this Declaration may be enforced by any aggrieved Owner.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with Applicable Law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

(f) **No Liability for Trespass.** Whenever the Association, the Board of Directors or Declarant exercises any right herein set forth in this Declaration and in connection therewith enters upon any Lot, such parties shall not be liable for trespass upon such Lot.

**ARTICLE VII  
AMENDMENT AND TERMINATION**

**Section 7.1 Amendment.**

During the Declarant Control Period, this Declaration may be amended by Declarant at any time. Within the Declarant Control Period, Declarant may amend the Declaration for any reason without the consent or joinder of any party or without the need to call a meeting of the Association. In addition to the foregoing, the Declaration may be amended by an instrument containing such amendment(s) and recorded in the Official Public Records of the County, provided, that (i) during the period Declarant owns at least one Lot, no such amendment shall be valid or effective without the joinder and consent of Declarant and (ii) such amendment shall first be approved by the affirmative vote or written consent of the Association's Members representing at least 51% of the votes in the Association voting, in person or by proxy, at a duly convened meeting of the Association. Furthermore, Declarant or the Board may, at its sole discretion and without a vote or the consent of any other party, modify, amend, or repeal this Declaration: (i) as necessary to bring any provision into compliance with any Applicable Law or judicial determination; (ii) as necessary to comply with the requirements of VA, or HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency or secondary mortgage market entity; or (iii) as necessary for clarification or to correct technical, typographical or scrivener's errors; provided, however, any amendment pursuant to clause (ii) and/or (iii) immediately above must not have a material adverse effect upon any right of any Owner. Any amendment to this Declaration must be recorded in the Real Property Records of the County.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class B Member without the written consent of Declarant or the Class B Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Notwithstanding anything to the contrary contained in this Section 7.1, no modification or amendment to the terms of this Declaration relating to maintenance of Common Properties shall occur without prior City approval.

**Section 7.2 Termination.**

At any time, the Owners may terminate and extinguish this Declaration in its entirety by executing an instrument terminating this Declaration and recording same in the Official Public Records of the County, provided, however, that (i) for the period in which Declarant owns at least one Lot, no such termination shall be valid or effective without the joinder and consent of Declarant and (ii) such termination and extinguishment shall first be approved by the affirmative vote or written consent of the Association's Members representing at least 75% of the votes in the Association.

**ARTICLE VIII**  
**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 8.1 Membership.**

Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to each Lot, shall run with title to each Lot and may not be separated from ownership of any Lot which is subject to Assessment hereunder by the Association. Membership is mandatory and is not contingent upon the existence of or construction of any common element or amenity.

**Section 8.2 Classes of Membership.**

The Association shall have two (2) classes of voting membership:

**CLASS A.** Class A Members shall all be Members with the exception of the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership; provided, however, that in the event that more than one (1) person holds such interest or interests in any Lot, even though all such persons shall be Members, there shall be only one (1) vote for such Lot, which shall be exercised as they, among themselves, determine (but in no event shall more than one (1) vote be cast with respect to any such Lot).

**CLASS B.** The Class B Member shall be the Declarant, who shall be entitled to **twenty (20) votes for each Lot owned by such Declarant.** Subject to the conditions set forth in the remainder of this paragraph, the Class B membership applicable to the Declarant's Property shall be converted to Class A membership upon the earlier of (i) the sale or transfer of the last lot owned by Declarant, (ii) twenty (20) years from this filing, or (iii) the recording in the Records of Denton County, Texas, of a notice signed by the Declarant terminating its Class B membership. In determining the number of Lots owned by the Declarant for the purpose of Class B membership status hereunder, the total number of Lots covered by this Declaration shall be considered including any property latter annexed.

**Section 8.3 Quorum and Notice Requirements.**

8.3.1. Except as expressly provided herein to the contrary, any action of the Members shall require the assent of a majority of the votes of those Association Members who are present at a meeting, in person or by proxy, written notice of which shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of such meeting.

8.3.2. A quorum is required for any action referred to in Section 8.3.1 and, unless otherwise provided, for any action for which a percentage vote at a meeting is required. A quorum shall be determined as set forth in this Section 8.3.2. A meeting, whether regular or special, the presence of Members, in person or by proxy, both classes together, entitled to cast ten percent (10%) of all of the votes of the Association's Members, shall constitute a quorum. If the required quorum is not present at the initial meeting, additional meetings may be called, subject to the notice requirement hereinabove set forth, and the required

quorum at such subsequent meeting(s) shall be one-half (1/2) of the quorum requirement for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum. At such adjourned or subsequent meeting at which a quorum shall be present or represented, any business may be transacted which may have been transacted at the meeting as originally notified. During the Declarant Control Period should the required quorum not be met after the second attempt the presence of the Declarant or the presence of the Declarant's representative sent and signified by proxy at the meeting shall constitute a quorum.

8.3.3. Except as specifically set forth in this Declaration, notice, voting and quorum requirements of any action to be taken by the Association shall be set forth in its Bylaws, as same may be amended from time to time.

#### Section 8.4 Right of Inspection.

Each Owner shall have the right to inspect the financial records and books of the Association, during normal business hours and at the place where such books are kept, upon reasonable prior written notice to the Association stating a proper purpose in accordance with Section 209.005 of the Texas Property Code, as amended, and pursuant to the Open Records Policy established by the Association.

### ARTICLE IX THE COMMON PROPERTIES

#### Section 9.1 Initial Common Properties.

The Common Properties may include but are not limited to, and by way of illustration only, all aspects of the entry features, entry monuments and walls, landscaping, irrigation for same and the land on which such entry features are situated, retention ponds, screening walls, pocket parks, a clubhouse and associated recreational amenity, gates, fences, fountains and other structures, whether or not shown on a Final Plat, or as deemed necessary by Declarant, each as may be leased, maintained or owned by the Association. **The foregoing list is intended to illustrate examples of Common Properties and under no circumstance shall such list impose any obligation on the Declarant or the Association to purchase, install or construct any such features or amenities.** Assessments as set forth in the Declaration are not contingent upon the existence, construction or development of Common Properties or Amenities. The Common Properties may hereafter include any neighborhood parks or other improvements or land conveyed to or leased by the Association for the use and benefit of the Owners. Declarant, at its sole discretion, may transfer to the Association, and the Association shall accept as Common Properties, Personal Property and/or fee title or other property interests any improved or unimproved real property included within the property described in Exhibit "A".

Section 9.2 Additional Common Properties.

Additional property may be added to the Common Properties hereunder upon the sole discretion of Declarant during such time as Declarant owns at least one (1) Lot. Thereafter, additional property may be added to the Common Properties hereunder upon the affirmative vote of sixty percent (60%) of the votes of those Association Members who are voting, in person or by proxy, at a meeting duly called for such purpose.

Section 9.3 Acceptance and Control of Common Properties.

Declarant, or any third-party at the request of Declarant, may transfer to the Association, and the Association shall accept as Common Properties, personal property and/or fee title or other property interests in any improved or unimproved real property included within the property described in Exhibit A or any other real property made subject to this Declaration in the future. Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved real property originally conveyed to the Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines. *Whether or not the Common Properties have been transferred or conveyed to the Association, Declarant shall have no responsibility for the maintenance, repair, replacement, or improvement of the Common Properties or any improvements thereon after initial construction.*

Section 9.4 Extent of Members' Easement in the Common Properties.

Each Member shall have a right and easement of access, use and enjoyment in and to the Common Properties which is subject to the following:

9.4.1 The right of the Association to prescribe Rules governing the use, operation and maintenance of the Common Properties;

9.4.2 The right of the Association to take such steps as is reasonably necessary to protect the Common Properties against foreclosure;

9.4.3 The right of the Association to suspend the right of any individual (including occupants/tenants) to use any of the Common Properties and/or common facilities for any period during which any Assessment against a Lot resided upon or owned by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of the Rules of the Association, the Declaration, or the Design Guidelines; and

9.4.4 The right of the Association to charge reasonable admission and other fees for the use of recreational facilities on the Common Properties, if any such recreational facilities are ever constructed.

An Owner who does not occupy a Lot delegates this right of enjoyment to the tenants or occupants of such Owner's Lot. Notwithstanding the foregoing, if a portion of the Common Properties, such as a recreational area, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes pursuant to the Rules, if any.

#### Section 9.5 Dedication of the Common Properties.

The Board of Directors shall have the right at any time to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and upon such conditions as the Board of Directors may determine.

#### Section 9.6 Security.

The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner acknowledges and agrees, for himself and his tenants, immediate family, guests, agents, permittees, and licensees, that Declarant, the Association, the Managing Agent (if any) and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner acknowledges and accepts his sole responsibility to provide security for his own person and property, and any tenants, immediate family, guests, agents, permittees, and licensees of such Owner, and assumes all risks for loss or damage to same. Each Owner further acknowledges that Declarant, the Association, its Managing Agent (if any) and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner acknowledges and agrees that Declarant, the Association, its Managing Agent (if any) and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

#### Section 9.7 Risk.

**EACH OWNER, OWNERS' TENANTS, IMMEDIATE FAMILY, GUESTS, AGENTS, PERMITTEES, AND LICENSEES SHALL USE ALL COMMON PROPERTIES AT HIS/HER OWN RISK. ALL COMMON PROPERTIES ARE UNATTENDED AND UNSUPERVISED. EACH OWNER, OWNERS' TENANTS, IMMEDIATE FAMILY, GUESTS, AGENTS, PERMITTEES, AND LICENSEES IS SOLELY RESPONSIBLE FOR HIS/HER OWN SAFETY, AND ASSUMES ALL RISK OF LOSS IN CONNECTION WITH THE USE OF COMMON PROPERTIES AND RELATED AMENITIES AND IMPROVEMENTS WITHIN THE SUBDIVISION. NEITHER THE ASSOCIATION NOR THE DECLARANT, NOR ANY MANAGING AGENT ENGAGED BY THE ASSOCIATION OR DECLARANT, SHALL HAVE ANY LIABILITY TO ANY OWNER OR THEIR TENANTS, FAMILY MEMBERS OR GUESTS, OR TO ANY OTHER PERSON OR ENTITY, ARISING OUT OF OR IN CONNECTION WITH THE USE, IN ANY MANNER WHATSOEVER, OF THE COMMON PROPERTIES OR ANY IMPROVEMENTS COMPRISING A PART THEREOF FROM TIME TO TIME, AND THE ASSOCIATION, DECLARANT AND MANAGING AGENT DISCLAIMS ANY AND ALL LIABILITY OR RESPONSIBILITY FOR INJURY OR DEATH OCCURRING FROM USE OF THE COMMON PROPERTIES.**



#### Section 9.8 Rights of the City.

The City, including its agents and employees, has the right of immediate access to the Common Properties at all times if necessary for the welfare or protection of the public, to enforce City ordinances, or for the preservation of public property. If the Association fails to maintain the Common Properties to a standard acceptable to the City, the City may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's written demand, the City may maintain the Common Properties at the expense of the Association after giving written notice of its intent to do so to the Association. To fund or reimburse the City's cost of maintaining the Common Properties, the City may levy an Assessment against every Lot in the same manner as if the Association levied a Special Assessment against the Lots. The City may give its notices and demands to any officer, director, or agent of the Association, or alternatively, to each Owner of a Lot as shown on the City's tax rolls. The rights of the City under this Section are in addition to other rights and remedies provided by law

### ARTICLE X COVENANT FOR ASSESSMENTS

#### Section 10.1 Creation of the Lien and Personal Obligation of Assessments.

Each Owner hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association) the following: (a) annual assessments or charges ("Annual Assessments"); (b) assessments acquisition upon the acquisition of a Lot by an Owner other than Declarant for working capital or reserves ("Acquisition Assessments"); (c) special assessments for capital improvements and unanticipated costs of the Association or related to the performance of the Associations duties and responsibilities hereunder ("Special Assessments"); (d) individual special assessments (including, without limitation interest and fines) levied against individual Owners for violations of the Declaration, Design Guidelines or the Community-Wide Standard or to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner, his tenant(s) occupying his Lot, if applicable, and their respective family, agents, guests and invitees, or for costs incurred by the Association resulting from any Owner failing to comply with the terms and provisions hereof, or for costs for maintenance and repairs of Common Properties that benefit some but not all Owners (i.e. cluster mailbox maintenance) ("Special Individual Assessments"). The Annual Assessments, Working Capital Contributions, Special Assessments, and Special Individual Assessments are herein generally referred to as an "Assessment" and collectively (whether two or more) as the "Assessments." All such Assessments shall be fixed, established and collected as hereinafter provided.

The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such Assessment is made. Each such Assessment, together with late charges, collection costs, such interest thereon and cost of collection thereof, including attorneys' fees, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the Assessment fell due.

Fines, not to exceed \$1,000.00 per violation occurrence, shall be assessed as an Individual Special Assessment upon the expiration of a reasonable time after the date notice of such violation was sent to the violating Owner. In all instances of violations, the Owner shall be responsible for correcting such violation within a reasonable time after the date of such notice, regardless as to whether the residence is occupied by the Owner or a tenant. The Assessment Lien provided for herein shall secure payment of fines not timely paid and the Owner shall also have personal liability for the payment of same.

#### Section 10.2 Purpose of Assessments.

The Assessments levied by the Association shall be used as follows: (a) for the purpose of promoting the interests of the Association and the recreation, health and welfare of the residents of the Property, and in particular for the improvement and maintenance of the entry ways or any other properties, services and facilities devoted to this purpose and comprising or directly relating to the use and enjoyment of the Common Properties, including, but not limited, to the payment of taxes on and insurance in connection with the Common Properties, and the repair, replacement and additions thereto; (b) for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article XI hereafter including, but not limited to, the payment by the Association of all Assessments and charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting (if any) of the Common Properties; (d) for paying the cost of maintenance of the monument sign for the Property, if any, in the event the appropriate governmental authority refuses to maintain the same; or (e) for carrying out the purposes of the Association as stated in its Certificate of Formation. *The list above is not intended to be construed as an all-inclusive list but, is provided for informational purposes based on the most common expenses incurred by an Association.*

#### Section 10.3 Basis and Amount of Annual Assessments.

10.3.1 The Board of Directors may fix the Annual Assessment at any amount equal to or less than the Maximum Annual Assessment for that year, as herein below provided. The Annual Assessment for each Lot beginning with the year 2019 shall be **Six Hundred Fifty and No/100 Dollars (\$650.00)**. Commencing with the year 2019 and each year thereafter, the Board of Directors may set the amount of the Maximum Annual Assessment for that year (and for following years) for each Lot which may be calculated and based on budget from year to year, provided that the maximum Annual Assessment may not be increased more than thirty-five percent (35%) above the maximum Annual Assessment for the previous year without a vote of the membership taken in accordance with the provisions

of Section 10.3.2 (such increased Annual Assessment as permitted or approved by the members being referred to herein as the "Maximum Annual Assessment" for such calendar year). **Builders, upon purchase of a Lot shall pay the minimum of one (1) full year's assessment at time of Lot purchase.**

10.3.2 Commencing with the year 2019, and in each year thereafter, the Board of Directors may set the Maximum Annual Assessment for the following year for each Lot at an amount more than thirty-five percent (35%) above the Maximum Annual Assessment for the previous year; provided that any such increased Annual Assessment shall be approved by the affirmative vote of fifty-one percent (51%) of the votes of those Association Members who are voting, in person or by proxy, regardless of class, at a meeting duly called for such purpose.

#### Section 10.4 Acquisition Assessments.

At any time, record title is transferred to any Owner (excluding the Declarant or a Builder), an Acquisition Assessment shall be paid to the Association by such Owner at closing in the amount of **Four Hundred Fifty and No/100 Dollars (\$450.00) for each Lot acquired.** Acquisition Assessments shall be in addition to, not in lieu of, any other Assessment provided for herein. Acquisition Assessments are not refundable and shall be available for all necessary expenditures of the Association as determined by the Declarant during the Declarant Control Period and thereafter, the Board. In addition to the foregoing but still considered an Assessment hereunder, the Board may, in its sole discretion, enter into a contract with a Managing Agent to oversee the daily operation and management of the Association. The Managing Agent may, and probably will, have fees, which will be charged to an Owner for the transfer of a significant estate or fee simple title to a Lot and the issuance of a "Resale Certificate" (herein so called) and production of documents of the Association as required under the Texas Property Code, such fees to be paid no later than closing of the sale of any Lot to a new Owner. The maximum amount of transfer and other reasonable fees that may be charged by the Managing Agent for each resale shall be Six Hundred Fifty and No/100 Dollars (\$650.00) for each home being conveyed, and are not refundable and may not be regarded as a prepayment of or credit against any Assessments, and are in addition to the contribution to the Acquisition Assessment. The Association or its agent shall not be required to issue a Resale Certificate until receipt of written request therefore including payment for the cost thereof has been received by the Association or its agent (provided the Association or its agent in receipt of such payment shall not process such payment until the Resale Certificate is available for delivery. This Section does not obligate the Board or any third party to levy such fees. Each year the Board shall review the Acquisition Assessment amount and at the sole discretion of the Board the Acquisition Assessment may be increased by the Board for each Lot at an amount not more than thirty percent (30%) above the Acquisition Assessment amount for the previous year. A Managing Agent's right to fees per this Section 10.4 may not be amended or terminated.

#### Section 10.5 Special Assessments.

The Association may also levy in any assessment year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, maintenance, unexpected repair or replacement of a described improvement or capital improvement upon the Common Properties, including the necessary fixtures and personal

property related thereto, or for any other reason; provided that any such Special Assessment shall not exceed an amount equal to fifty percent (50%) of the then current Annual Assessment rate. Amounts greater than fifty percent (50%) of the then current Annual Assessment rate shall require the approval by the affirmative vote of the fifty-one percent (51%) of Members present at a Board or Special Meeting of the Association who are voting, in person or by proxy, at a meeting duly called for such purpose.

**Section 10.6 Special Individual Assessments, Interest and Fines.**

In the event that any Owner fails to comply with the provisions of this Declaration, the Design Guidelines or the Community-Wide Standard and/or the Association incurs any cost or expense in either enforcing said provisions against any such Owner or in carrying out the obligations of any such Owner, the Association shall have the right to assess against such Owner and the Lot of such Owner a Special Individual Assessment in the amount of all such costs incurred by the Association plus interest and/or in the amount of any violation fine(s) levied by the Board. Individual Special Assessment, interest and fines to be paid by the applicable Owner upon demand by the Association.

**Section 10.7 Uniform Rate of Assessments.**

Both Annual Assessments and Special Assessments (excepting there from Special Individual Assessments) shall be fixed at a uniform rate for all Lots.

**Section 10.8 Date of Commencement and Due Dates of Assessments.**

The obligation to pay Assessments commences as to each Lot: (a) upon acquisition of record title to a Lot by the first Owner thereof other than Declarant; or (b) the month in which the Board first determines a budget and levies Assessments pursuant to this Article, whichever is later. The initial Annual Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot. Annual Assessments shall be payable in advance on the first (1st) business day of each January; provided, if the Board so elects, Annual Assessments may be paid in monthly, quarterly, or semi-annual installments. The Board may require advance payment of all or any portion of the Annual Assessment at closing of the transfer of title to a Lot. The due date or dates, if it is to be paid in installments, of any Special Assessment under Section 10.5 shall be fixed in the respective resolution authorizing such Special Assessment.

**Section 10.9 Duties of the Board of Directors with Respect to Assessments.**

10.9.1 The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

10.9.2 Only if such Assessment is an amount different from that charged for the previous year, written notice of the Assessment shall thereupon be delivered or mailed to

every Owner subject thereto (according the Association's then current records) along with a proposed budget.

10.9.3 The Board of Directors shall, upon demand, cause to be furnished to any Owner liable for said Assessments a certificate in writing signed by an officer or agent of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board or the Association's Managing Agent for the issuance of such certificates.

#### Section 10.10 Assessment Lien to Secure Charges and Assessments.

All Assessments, interest, late charges, collection fees and attorneys' fees, as provided for herein, shall constitute and be secured by a separate and valid and subsisting assessment lien (the "Assessment Lien"), hereby created and fixed, and which shall exist upon and against each Lot and all improvements and fixtures thereon, for the benefit of the Association. Notwithstanding any other provision hereof, the lien to secure the payment of Assessments or any other sums due hereunder and any other lien which the Association may have on any Lot pursuant to this Declaration shall be subordinate to the lien or equivalent security interest of any first lien mortgage or deed of trust on any Lot.

Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the liens securing maintenance charges or Assessments or any other sums due hereunder which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the Assessment Lien securing Assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or Assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future Assessments or charges be affected in any manner.

#### Section 10.11 Effect of Nonpayment of Assessment.

If any Assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest at the discretion of the Board at any time, and from time to time, from the due date until paid at the highest non-usurious rate allowed under the laws of the State of Texas, or other Applicable Law, or if no such limitation imposed then at the rate of fifteen percent (15%) per annum, and if placed in the hands of an attorney for collection or if collected through probate or other judicial proceedings, there shall be reimbursed to the Association its reasonable attorneys' fees. Should any Assessment provided for herein be payable in installments, the Association may accelerate the entire Assessment and demand immediate payment thereof. In addition, a late charge shall be assessed against the non-paying Owner for each month that any Assessment remains unpaid. The late charge shall be in the amount of Twenty-Five and No/100 Dollars (\$25.00) per month and shall serve to reimburse the Association for administrative expenses and time involved in collecting and processing delinquent Assessments. A charge of Twenty-Five and No/100 Dollars (\$25.00) or an amount equal to the bank charges shall be assessed against an Owner for payment returned for insufficient funds or for any other reason. The Association's Managing Agent shall be entitled to charge an Owner a monthly collection fee to compensate Managing Agent for its efforts in collecting delinquent Assessments. The Managing Agent may,

and probably will, have other fees for the collection and processing of delinquent accounts, which shall be charged to the delinquent Owner's account and payable to the Managing Agent. The Managing Agent shall be entitled to reimbursement for collection efforts such as but, not limited to demand letters, routine monthly collection actions, payment plan set up and monthly monitoring, processing and handling of certified or certified, return receipt mailings, and credit reporting. The Association, in the Board's discretion, shall have the right to waive any part of or all of such interest and/or fees owed only to the Association. The Association may not waive any fees owed to the Managing Agent without the express written consent of the Agent.

#### Section 10.12 Collection and Enforcement.

The Association shall have a lien on each Lot securing payment of any Assessment, together with interest thereon as provided herein, reasonable attorneys' fees, late charges, collection fees and costs incurred in the collection of same and the enforcement of said lien. The Board of Directors shall take such action as it deems necessary to collect Assessments which may include at the Declarant's or Board's discretion the use of third party collection agencies for the purpose of credit reporting associated with the collection of delinquent accounts, and may settle and compromise the same if deemed appropriate in the exercise of the Board's business judgment. Such liens shall be effective as and, in the manner, provided for herein and shall have the priorities established in this Declaration.

The Board of Directors may bring an action at law against any Owner personally obligated to pay an Assessment or foreclose the lien against such Owner's Lot, or both, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such Assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Board of Directors of the Association or its agent the right and power to bring all actions against such Owner personally for the collection of such Assessments as a debt and to enforce the aforesaid Assessment Lien by all methods available for the enforcement of such liens, including, but not limited to, nonjudicial foreclosure pursuant to Texas Property Code Section 51.002 in force and effect on the date of this Declaration, or in accordance with the prescribed manner for foreclosure of deed of trust liens provided by any future amendment to such Section 51.002 or any other statute or article enacted in substitution therefore, and such Owner hereby expressly grants to the Board of Directors a private power of sale in connection with said lien. The Board is hereby appointed trustee, unless and until the Board of Directors shall designate a substitute or successor trustee, as hereinafter provided, to post the required notices as provided by law and conduct such foreclosure sale. The lien provided for in this Section shall be in favor of the Association and shall have the same effect as though each Owner had expressly granted to the Association a deed of trust lien as well as a security interest in said Lot to secure the payment of the Assessments provided for herein. In addition to such notices as required by the aforesaid statute, the trustee shall mail to the Owner of a Lot for which the Assessment has not been paid, a copy of the notice of Assessment lien prior to the date any notice of sale is posted, by certified, return receipt requested, at the Lot or such other address as the Board has been advised in writing for receipt of notices under this Declaration. Notwithstanding the foregoing, any mandatory foreclosure requirements of Section 209 of the Texas Property Code shall be adhered to by the foreclosing entity.

At any foreclosure, judicial or nonjudicial, the Association shall be entitled to bid up to the amount of its lien, together with costs and attorneys' fees, and to apply as cash credit against its

bid all sums due the Association covered by the lien foreclosed. All foreclosure sales provided for herein shall be subject to any then existing statutory right of redemption in favor of the former Owner. From and after any such foreclosure, the former Owner or Owners, their heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the purchaser at such sale, and in the event of their failure to surrender possession of said property upon demand, the purchaser, or his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such Lot, or any part thereof, is situated. The Board of Directors in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act in the place of the trustee without any formality other than the designation in writing of a substitute or successor trustee; and the authority hereby conferred by the Board of Directors shall extend to the appointment of other successor and substitute trustees successively until the delinquent Assessment or Assessments have been paid in full, or until said property is sold, and each substitute and successor trustee shall succeed to all the rights and powers of the original trustee appointed by the Board of Directors or its agents. Without limiting the foregoing, and in addition to the rights and remedies of the Association hereunder, the Association through its Board, or any Management Agent may report delinquent owners to a credit reporting agency.

#### Section 10.13 Homestead.

By acceptance of a deed thereto, the Owner and spouse thereof, if married at the time of the conveyance or subsequently married, of a Lot shall be deemed to have waived any exemption from liens created by this Declaration or the enforcement thereof by foreclosure or otherwise, which may other be available by reason of the homestead exemption provisions of Texas law, if for any reason such are applicable. This Section is not intended to limit or restrict in any way the lien or rights granted to the Association by this Declaration, but construed in its favor.

#### Section 10.14 Omission of Assessments.

**The omission of the Board of Directors, before the expiration of any assessment period, to fix the Assessments hereunder for that or the next assessment period, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent assessment period, but the Assessment fixed for the preceding assessment period shall continue until a new Assessment is fixed or levied by the Board.**

#### Section 10.15 Maintenance Fund; Working Capital Fund.

10.15.1 The Association may, but is not obligated to, establish and maintain a maintenance fund for the periodic maintenance of the Common Properties or for any other use (the "Maintenance Fund / Working Capital Fund"). The Maintenance Fund / Working Capital Fund described in this Section are not the same as the Acquisition Assessment described in Section 10.4 above and shall act similar to an unrestricted reserve. Contributions to this fund may be received by assessing an additional Maintenance Fund; Working Capital Fund fee in addition to the Acquisition Assessment fee described in Section 10.4 above at time of resale of a lot to any owner other than Declarant or Builder.

The contribution amount may be set at the sole discretion of the Board notwithstanding, the amount levied may not exceed fifty percent (50%) of the then current annual assessment amount levied against a Lot. Subject to the provisions of Section 10.3 above, the Board may at any time establish, and/or ratably increase or decrease the amounts of regular Annual Assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including provisions for reasonable reserves as outlined herein or as deemed necessary and appropriate. So long as the Board exercises business judgment in determining the amount or necessity of the Maintenance Fund / Working Capital Fund, the amount held in reserves shall be considered adequate. The Board shall have the right and duty to allocate funds from the Working Capital Fund for maintenance, improvements, and other needs of the Association wherein it is determined the Association's operating funds shall not be sufficient to cover the costs thereof. This fund may be used for immediate repair or replacement of cluster mailboxes in order to restore mail service to Owners notwithstanding, cost associated with the replacement of a cluster mailbox shall be borne by the Owners to whom the cluster mailbox serves as the receptacle for the receipt of U.S. mail or packages therefore, the Association shall issue a uniform Special Assessment or Individual Special Assessments upon each Owner whom the cluster mailbox serves and funds collected shall be deposited back to the Working Capital or Reserve Account used. The Maintenance Fund / Working Capital Fund may also be funded from Assessments so long as the Association's budget for that fiscal year accounted for and allocated funds for this purpose. ***In no event is Declarant required to establish, replenish, fund or maintain a Maintenance Fund / Working Capital Fund during the Development Period or Declarant Control Period or thereafter.***

Section 10.16 Exempt Property.

The following property subject to this Declaration shall be exempted from the Assessments, charges and Assessment Lien or other liens created herein:

10.16.1 All properties dedicated and accepted by the local public authority and devoted to public use; and

10.16.2 All Common Properties.

Section 10.17 Declarant Subsidy.

***The Declarant shall not be responsible or liable for any deficit in the Association's funds.*** The Declarant may, but is under no obligation to, subsidize any liabilities incurred by the Association (in addition to any amounts paid by Declarant under Section 10.18 below), and the Declarant may, but is not obligated to, lend funds to the Association to enable it to defray its expenses, provided the terms of such loans are on reasonable market conditions at the time. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The subsidy may be treated by the Declarant, in its sole discretion, as a loan from the Declarant to the Association or as an advance against future Assessments due or as a contribution, as evidenced by a promissory note or other memorandum of understanding.



#### Section 10.18 Declarant's Assessment.

Notwithstanding any provision of this Declaration or the Certificate of Formation or Bylaws to the contrary, so long as there is Class B membership in the Association, the Declarant is under no obligation to pay assessments or fund the Association notwithstanding, **the Declarant may elect, at its sole discretion,** either to pay Annual Assessments on its unsold Lots or pay the difference between: (a) the Association's normal recurring operating expenses otherwise to be funded by Annual Assessments (after applying all income received by the Association from other sources); and (b) the sum of the revenues of the Association from all sources. Should Declarant choose to exercise this option, upon sixty (60) days' notice to the Association, the Declarant may change its election hereunder during the fiscal year. ***"All sources" includes, but is not limited to, revenues from the operation of Common Properties, Acquisition Assessments, Maintenance Fund / Working Capital Fund, capital contributions, accounting service fees, guest fees, user fees, and the Assessments levied against the owners of Lots, other than the Declarant.*** Such difference, herein called the "deficiency", shall not include any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or Special Assessments, and Declarant shall not be responsible, in any event, for any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or Special Assessments. Any sums paid by the Declarant to the Association to fund the "deficiency" or any sums paid by the Declarant to the Association in excess of the Annual Assessment otherwise due on the Declarant's unsold Lots may be considered by the Declarant to be the payment of a subsidy to the Association pursuant to Section 10.17 of this Article. Declarant's contributions hereunder may be satisfied in the form of cash or by "in kind" consideration of services or materials, or by a combination of these. After termination of the Class B membership, Declarant shall pay Assessments on its unsold Lots in the same manner as any other Owner, except as otherwise expressly provided herein. Declarant may, at its sole discretion, choose to enter into an agreement with the Association wherein monies loaned to the Association by the Declarant may be applied against any assessments the Declarant would owe on unsold lots after the Class B period expires. Any outstanding loan amount after Declarant's obligation to pay assessments ends shall still be a valid debt to the Association.

### ARTICLE XI GENERAL POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

#### Section 11.1 Power and Duties.

Except as provided in Article XII below, the Board, for the benefit of the Association, the Property and the Owners shall have the right to do all things which are necessary or advisable in connection with enforcing the provisions of this Declaration. During the Declarant Control Period the Declarant may limit the duties of the Board of Directors. Such powers shall include, but shall not be limited to, the following:

11.1.1 Paying assessments and charges for sewer, water and garbage pickup services for the Properties, if any, the installation and maintenance charges for street lighting for the Property, if any, and taxes, assessments and other charges which shall properly be assessed or charged against the Common Properties.

11.1.2 Performing maintenance on the Common Properties which may include, without limitation, the following: (a) maintenance of any driveways, private roadways, jogging paths, walkways and sidewalks; (b) maintenance of grounds, including care of trees, shrubs and grass, lighting systems, sprinkler systems (if installed) and similar facilities on the Common Properties; and (c) maintenance of the entry monument(s) and any screening walls or fences constructed around the perimeter of the Property; provided, further, that in the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family, his guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Lot is subject.

11.1.3 Managing and maintaining the Common Properties and full maintenance of a utility service for the Common Properties; the furnishing and upkeep of any desired personal property for use in the Common Properties.

11.1.4 Purchasing a policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association, in an amount not less than \$250,000.00 to indemnify against the claim of one person, \$500,000.00 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$50,000.00 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insured's; provided, that under no circumstances shall the Board be authorized to provide or pay for fire, casualty, or other insurance insuring the interest of any Owner in his Lot.

11.1.5 Executing all replats of the Property and all declarations of ownership for tax assessment purposes with regard to the Common Properties on behalf of all Owners.

11.1.6 Borrowing funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

11.1.7 Entering into contracts, maintaining one or more bank accounts, and generally exercising all the powers necessary or incidental to the operation and management of the Association, expressly including the power to enter into management and maintenance contracts. Some contracts entered into by the Declarant or during the period of Declarant control may have extended terms which may not be terminated or renegotiated during the term of the contract. The Board may not terminate any contract during the Declarant Control Period without the express written consent of Declarant.

11.1.8 Protecting or defending the Common Properties from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

11.1.9 Making reasonable Rules for the operation of the Common Properties and amend them from time to time, provided that any rule or regulation may be amended or repealed by the vote of at least fifty-one percent (51%) of those Members present, in person or by proxy, at a meeting called for such purpose (without limiting the generality of the

foregoing language, the Rules may provide for limitations on use of the Common Properties during certain periods by youthful persons, visitors or otherwise).

11.1.10 Adjusting the amount, collecting and using any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, assessing the Members in proportionate amounts to cover the deficiency.

11.1.11 Enforcing the provisions of this Declaration, the Design Guidelines, any Community-Wide Standard, and any Rules made hereunder, and to enjoining and seeking damages from any Owner for violation of such provisions or Rules. Board may promulgate, amend, or rescind rules at any time and from time to time to clarify, enhance, supplement, or otherwise subject Owners to certain rules and restrictions to provide for better protection of the general aesthetics and preservation of common areas and common elements as well as the overall development, protect the safety, health and welfare of Owners, occupants, guests, and invitees, protect property values, and as the Board may from time to time deem appropriate and necessary.

11.1.12 Exercising the rights granted to the Association in this Declaration, including, without limitation, all rights of the Board, the Association, and the ACC relating to architecture, design, and construction review and inspections under Article III.

11.1.13 Establish, suspend, and dissolve committees at the Board's sole discretion. All Committees shall be governed by the Board and serve at the sole discretion of the Board. The Board shall establish a charter, Mission Statement, or Guidelines by which the Committees and its Members shall conduct themselves. The Board shall have the sole right to appoint and remove any Committee Member with or without cause. The establishment, suspension, or dissolving of a Committee shall be done by Resolution of the Board.

The Association may exercise any right or privilege given to it expressly or by reasonable implication by this Declaration, the Bylaws, or the Certificate of Formation, and may act as reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in such documents or by law, all of the Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Properties, enforcement of this Declaration, or any other civil claim or action. **However, the Board shall exercise business judgment in determining whether to take any such action under particular circumstance and shall have no legal duty to institute litigation under any circumstances on behalf of or in the name of the Association or the Members.**

#### Section 11.2 Board Power, Exclusive.

The Board shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the maintenance fund, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

#### Section 11.3 Owner's Obligations to Repair.

Except for those portions of each Lot constituting the Common Properties, each Owner shall at his sole cost and expense, shall maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair at all times. In the event that any Owner shall fail to maintain and repair his Lot and such improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right but not the obligation, subject to the notice and cure provisions of Section 6.1 above, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any Assessments hereunder when due. Maintenance to an Owner's Lot shall include all exterior portions of the residence and any structure such as but, not limited to sheds, detached garages, if applicable, play equipment such as children's play sets, fences, retaining walls, garage doors, and roofs.

#### Section 11.4 Maintenance Contracts with Owners.

The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by or for the Association of services pursuant to the terms hereof (including, but not limited to, the maintenance and repair of fences owned by any such Owner), such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and to the best interest of the Association; provided, however, that same must be commercially reasonable in all circumstances.

#### Section 11.5 Liability of the Board of Directors.

The Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding if approved by the Board of Directors at the time of such settlement) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

**OFFICERS, DIRECTORS, AND COMMITTEE MEMBERS SHALL NOT BE LIABLE FOR ANY MISTAKE OF JUDGMENT, NEGLIGENCE OR OTHERWISE, EXCEPT FOR THEIR OWN INDIVIDUAL WILLFUL MISFEASANCE, MALFEASANCE, MISCONDUCT, OR BAD FAITH. The Association's officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association. The Association shall**

indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as an Association expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 11.6 Notice and Hearing Procedures Prior to the Initiation of Certain Types of Actions by the Association.

Except as set forth in paragraph (c) below, prior to filing suit to enforce the provisions of this Declaration, the Design Guidelines, any Community-Wide Standard or Rules promulgated hereunder, the Association shall comply with the notice and hearing procedures set forth in subsections (a) and (b) below.

(a) Notice. The Association shall serve the alleged violator with a minimum of one (1) written notice describing (i) the nature of the alleged violation, (ii) the action which the Association proposes or intends to take unless the violation is corrected within a reasonable time (reasonable time being not less than five (5) or more than ten (10) days for each notice excluding instances deemed as emergencies or considered to be a hazard or safety issue, a nuisance, annoyance of any kind). *In the event of an emergency or any situation deemed to be a safety or health hazard immediate action may be taken by the Board to address the matter.* Efforts will be made to notify the Owner by telephone, e-mail, and/or posting notice to the door of residence. After written notice an Owner may request a hearing for a period up to thirty (30) days from the date of the notice which the alleged violator may present by certified and regular U.S. mail. After written notice of a violation the Association may proceed with the actions outlined in the notice which may include the Association's right to initiate Self Help actions wherein the Association shall make the necessary repairs to correct the violation and all charges incurred by the Association in abating the violation shall be assessed to the Owner's account notwithstanding, if Owner presents a request for a hearing within the thirty (30) day time allotted, all fines for non-compliance shall be placed on hold and any further enforcement action of any source shall be placed on hold until after the hearing date and the rendering of decision. Non-Payment of fines for non-compliance or charges assessed by the Association for Self Help remedies will be collected according to Applicable Law and per current Texas Property Code regulations. Fines may be levied in lump sum or increments and the Board may establish a different fining schedule for certain violations as may be set forth in this Declaration, a Notice and Fining Policy, or in Rules and Regulations. Charges will be subject to possible late and/or collection charges when applicable. If the violation is abated within the time period set forth in the written notice, the Association shall suspend the proposed action unless a similar violation occurs within six (6) months from the date of the written notice. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and Rules by any Owner. Recurring violations within a six (6) month period will not require the Association to issue again notices previously sent. If the required one (1) notice was previously sent, the Association may, at its discretion, send an immediate notice of fine warning or notice intending to initiate self-help to the Owner which must allow the Owner not less than five (5) nor more than ten (10) days to

correct the violation. If Owner does not make the necessary corrections, the Association may begin fines or initiate Self Help action without further notice required.

(b) **Hearing.** If a hearing is requested within the allotted thirty (30) day period, the hearing shall be held before a committee appointed by the Board consisting of three (3) persons, all of whom shall be Owners or Residents of the Subdivision or representatives of the Declarant. A representative of the Association shall be afforded a reasonable opportunity to make a statement describing the alleged violation and to present any evidence or witnesses to support its statement. The alleged violator shall also be afforded a reasonable opportunity to be heard and to present any evidence or witnesses on his or her behalf. At the conclusion of all statements and presentations, the committee may close the hearing and retire to discuss the evidence and to render a judgment as to whether, in fact, a violation has occurred notwithstanding, the Committee is not required to render a decision the date of the hearing and may take additional time review and render a judgment if necessary. The committee shall notify the Association and the alleged violator in writing of its determination within ten (10) days after the hearing. If the committee determines that a violation has occurred, the Association may pursue any and all remedies described in its original notice of the violation. The alleged violator shall have the opportunity to appeal the decision of the committee to the Board in accordance with Section 209.007 of the Texas Residential Property Owners Act, Texas Property Code, as it may be amended.

(c) **Applicability.** The notice and hearing procedures set forth in this Section shall not apply to any claim: (i) upon which the Board deems it necessary to obtain emergency injunctive relief; (ii) pertaining to the collection of Assessments; or (iii) where the Association decides to exercise its right of self-help to cure the violation after written notice to the Owner and an opportunity to cure.

## **ARTICLE XII AUTHORITY AND CONTROL BY DECLARANT**

### **Section 12.1 Declarant Rights.**

**Notwithstanding anything herein to the contrary, so long as Declarant owns at least one (1) Lot, Declarant shall have the sole right, but not the obligation, in its sole discretion, at any time, effective as of the date hereof, to control, perform and/or conduct the following which is not intended to present an all-inclusive list but, to reflect the more common actions Declarant might take:**

- (1) amend without consent or joinder of the Owners the Declaration, Bylaws, Design Guidelines and the Community-Wide Standard, in whole or in part;
- (2) enforce the provisions of this Declaration and Bylaws, adopt or amend Rules and Regulations, and change or limit the powers and responsibilities of the Board;
- (3) review, determine and enforce the architectural control of the Lots; and
- (4) assigns its rights and obligations under this Declaration to any entity at any time, in whole or in part.

Declarant's rights set forth above are absolute in its sole discretion and do not require the approval, consent, or joinder of (i) any Owner, (ii) the Association, (iii) the Board of Directors, or (iv) any committees or other parties which may be established with respect hereto. Further, and without regard to whether or not the Declarant has been released from obligations and duties to the Association, during the Declarant Control Period or so long as the Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor its Board, nor any member of the Association shall take any action that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the sale of Lots. In the event there is a breach of this Section, it is acknowledged that any monetary award which may be available would be an insufficient remedy and therefore, in addition to all other remedies, the Declarant shall be entitled to injunctive relief restraining the Association, its Board or any member of the Association from further breach of this Section. At such time as Declarant no longer owns a Lot within the Property, all of such rights of enforcement shall revert to the Board of Directors of the Association. The Association shall not take any action directly or indirectly that will interfere with a Builders ability to construct on a Lot and conduct sales of homes.

In the event any other provision in this Declaration is in contradiction to this Article XII, in whole or in part, this Article XII shall prevail.

From time to time, the Declarant reserves the right to replat its Property or to amend or modify the Plat in order to assure harmonious and orderly development of the Property as herein provided. The Declarant may exercise such rights at any time during the Declarant Control Period and no joinder of any other Owner shall be required to give effect to such rights, each Owner consenting to the Declarant's execution of any replat on such Owner's behalf. However, any such replatting or amendment of the Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for compliance with any Applicable Law. The Declarant's rights under this Section 12.1 shall expire upon expiration of the Declarant Control Period

#### Section 12.2 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, including Lots, and a nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned, or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repairs or damages relating to defective workmanship or materials.

Section 12.3. Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Property for the purpose of making, constructing, and installing such improvements to the Property, as Declarant deems appropriate in its discretion.

Section 12.4 Construction Activities.

All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, and/or its agents, contractors, subcontractors, licensees, and other designees, shall conduct development and construction activities within the Property and that such activities shall be conducted in phases and may cause disturbance and disruption which impact the use and enjoyment of a Lot. Efforts will be made to keep construction hours within reasonable times of the day notwithstanding, construction between the hours of 6:00 a.m. and 8:00 p.m. should be expected. The Declarant has the right but, not the obligation to amend the hours and days of construction activities upon written notice to the contractors, subcontractors, licensees, and other designees. The Board may not amend construction hours but may place some limitations on construction activity and address issues with Builders such as failure to keep Lots under construction clean by placing all trash and construction debris into a commercial sized garbage bin as well as ensuring Builder's keep all tools, supplies, equipment off of and out of the streets. If the Association has to hire a street sweeper to clean after a Builder that Builder or Builders building in the blocks affected will be billed uniformly for their pro-rata share of the costs.

By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Property generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree: (a) that such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other persons under their control or direction to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant and all of its agents, contractors, subcontractors, licensees, and other designees, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of Lots within the Property.



#### Section 12.5 Changes in Master Plan.

Each Owner acknowledges that the Subdivision is a planned community, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support any protest, challenge, or other form of objection to (a) changes in uses or density of property within the Property, or (b) changes in the master plan of the Subdivision, including, without limitation, the enlargement of the master plan and the acquisition or revision of regulatory approvals to reflect the annexation of real property, without Declarant's prior written consent, which consent may be granted or withheld in Declarant's discretion.

Each Owner acknowledges and agrees that the present plans and themes for the Property's development may change and that it has not relied on any representation, warranty, or assurance by any person: (a) that any Lots, or other property or facilities will or will not be added, modified, or eliminated within the Property; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to: (a) the design, construction, completion, development, use, benefits, or value of the Property; or (b) the number, types, sizes, prices, or designs of any residential structures or improvements built or to be built in any part of the Property.

#### Section 12.6 Dispute Resolution Involving Declarant.

(a) Right to Correct. Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

(b) Alternative Method for Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all persons subject to this Declaration; any Builder, its officers, directors, employees and agents; and any person not otherwise subject to this Declaration who agrees to submit to this Section 12.6 (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those Claims as described in Article XVI hereof to the mandatory procedures set forth in Article XVI.

**ARTICLE XIII  
OBLIGATIONS OF BOARD OF DIRECTORS**

**Section 13.1 Obligations of Board of Directors.**

Notwithstanding anything herein to the contrary, and so long as Declarant is acting on behalf of the Board of Directors as further described in Section 13.2 below, *the sole responsibility and obligation of the Board of Directors shall be to maintain the corporation books of the Association and maintain the Association in good corporate standing with Secretary of State of the State of Texas and in good standing with the Office of the Comptroller of Public Accounts of the State of Texas.*

**Section 13.2 Liability for Association Operations.**

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant (including its successors, assigns, and agents) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Properties and the collection of Assessments.

**Section 13.3 No Liability for Acts of Third Party.**

**OWNERS AND OCCUPANTS OF LOTS, AND THEIR RESPECTIVE GUESTS AND INVITEES, ARE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND FOR THEIR PROPERTY WITHIN THE PROPERTY. THE ASSOCIATION MAY BUT IS NOT OBLIGATED TO MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY WHICH PROMOTE OR ENHANCE SAFETY OR SECURITY WITHIN THE PROPERTY. HOWEVER, THE ASSOCIATION, AND DECLARANT SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PROPERTY, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.**

**NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING FIRE PROTECTION, BURGLAR ALARM, OR OTHER SECURITY MONITORING SYSTEMS, OR ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTY, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND SHALL BE RESPONSIBLE FOR INFORMING ITS TENANTS AND ALL OCCUPANTS OF ITS LOT THAT THE ASSOCIATION, THE BOARD AND ITS COMMITTEES, AND DECLARANT ARE NOT**

**INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PROPERTY ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS OF LOTS, RESULTING FROM ACTS OF THIRD PARTIES.**

**ARTICLE XIV  
EXPANSION OF THE PROPERTY**

**Section 14.1 Expansion of the Property.**

Declarant, in its sole discretion and without the approval of any other party, may from time to time subject this Declaration to additional real property by recording in the Real Property Records of the County, a Supplemental Declaration describing the additional real property to be subjected to this Declaration. Any such Supplemental Declaration which is executed by Declarant and the owner of such additional property, if other than Declarant, and recorded in the Real Property Records of the County shall not require the consent or approval of any other Owner or other person in order to be fully enforceable and effective to cause such additional real property to be incorporated herein. Nothing in this Declaration shall be construed to require Declarant to subject additional real property to this Declaration.

**Section 14.2 Additional Covenants and Easements.**

Declarant, in its sole discretion and without the approval of any other party, may from time to time subject any portion of the Property, whether now or hereafter a part of this Declaration, to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through the Assessments, as described in Article X hereof. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the Property, whether now or hereafter a part of this Declaration, in order to reflect the different character and intended use of such Property. Any such Supplemental Declaration which is executed by Declarant and recorded in the Real Property Records of the County shall not require the consent or approval of any other Owner or other person in order to be fully enforceable and effective to cause such additional covenants and easements to be incorporated herein.

**Section 14.3 Effect of Recording Supplemental Declaration.**

A Supplemental Declaration shall be effective upon the recording of same in the Real Property Records of the County unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and Assessment liability in accordance with the provisions of this Declaration.

## ARTICLE XV GENERAL PROVISIONS

### Section 15.1 Mortgages.

It is expressly provided that the breach of any of the conditions contained herein shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, as to the same premises or any part thereof encumbered by such mortgage or deed of trust, but said conditions shall be binding thereto as to Lots acquired by foreclosure, trustee's sale or otherwise, as to any breach occurring after such acquisition of title.

### Section 15.2 Term.

This Declaration shall be enforceable by Declarant, the Association, any aggrieved Owner, and their respective legal representatives, heirs, successors, and assigns until December 31, 2050, after which time this Declaration shall extend automatically for successive 10-year periods unless at least sixty-seven percent (67%) of the then Owners have signed, within a six month period preceding the end of the initial term or any extension, an instrument which terminates this Declaration and such instrument is recorded in the Real Property Records of the County prior to the end of the term.

### Section 15.3 Severability.

If any provision herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final (*i.e.*, non-appealable) judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

### Section 15.4 Binding Effect.

This Declaration is for the mutual benefit of, and shall be binding upon, each and every person acquiring any part of the Property, it being understood that the covenants, conditions, restrictions, easements, and other provisions contained in this Declaration are not for the benefit of the owner of any land except that which is a part of the Property. This Declaration, when executed, shall be filed of record in the Real Property Records of the County, so that each and every Owner or purchaser of any portion of the Property is on notice of the covenants, conditions, restrictions, easements, and other provisions herein contained.

### Section 15.5 Notices.

Any notices or correspondence to an Owner shall be addressed to the street address of the Lot or to such other address as is specified by any such Owner in writing to the Association. The burden shall be on the Owner to prove that such written notification was duly given and delivered to the Association as provided below. Any notices or correspondence to the Association shall be addressed to the registered office of the Association as shown by the records of the Secretary of State for the State of Texas or to such other address as is specified by the Association in writing to the Owners.

Except as this Declaration or the Bylaws otherwise provide, all notices, demands, bills, statements, or other communications under this Declaration or the Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or by private carrier; if sent by United States mail; or, if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

Notices sent in accordance with this Declaration shall be deemed to have been duly given and effective:

(i) sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation.

#### **Section 15.6 Transfer Under Deed of Trust.**

Upon any transfer of Declarant's interest in and to the Property, or any part thereof, under the terms of any deed of trust lien upon the Property, whether voluntary or involuntary, by foreclosure, deed in lieu of foreclosure or otherwise, all rights, title and interests of Declarant under this Declaration, shall be transferred to and devolve upon the party to whom the Property or any part thereof, is thereby conveyed.

#### **Section 15.7 Notice of Transfer.**

If at any time a Lot is sold, the new Owner shall have the sole obligation to promptly notify the Association of the name and address of the new Owner and shall be responsible for any cost, charge or expense added to the account of such Owner which may have otherwise been avoided if the above information was promptly delivered to the Association.

#### **Section 15.8 No Liability for Trespass.**

Whenever the Declarant, ACC, the Association, Board of Directors, or an Agent acting on behalf of the Association, the ACC, the Board of Directors, or the Declarant exercises any right hereunder and in connection therewith enters upon any Lot, such parties shall not be liable for trespass upon such Lot.

#### **Section 15.9 Lien Priority.**

Notwithstanding any other provision of the Declaration, the Assessment Lien to secure the payment of Assessments and any other lien which the Association may have on any Lot pursuant to the Declaration for (a) Assessments or other charges becoming payable on or after the date of recordation of the first mortgage or deed of trust on any Lot, or (b) any fees, late charges, fines or

interest that may be levied by the Association in connection with unpaid Assessments, shall be subordinate to the lien or equivalent security interest of any legitimate third-party first lien mortgage or deed of trust on any Lot, if any. Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the Assessment Lien or other liens securing maintenance charges or Assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the Assessment Lien or other liens securing Assessments thereafter becoming due and payable, nor shall the liability of any Owner personally obligated to pay maintenance charges or Assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future Assessments or changes be affected in any manner. Any such maintenance charges or Assessments which are extinguished pursuant to the foregoing provision shall be reallocated and assessed to all Lots as a common expense.

#### Section 15.10 Use of Recreational Facilities and Other Common Properties.

The property made subject to this Declaration may contain common recreational facilities available for the use and enjoyment of Owners of property, including lots and homes, within the Subdivision, their families, tenants and other occupants of their property, and the guests of any such persons. **EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY PORTION OF THE PROPERTY MADE SUBJECT TO THIS DECLARATION, ACKNOWLEDGES THAT THE USE AND ENJOYMENT OF ANY RECREATIONAL FACILITY OR ANY OTHER PORTION OF THE COMMON PROPERTIES INVOLVES RISK OF PERSONAL INJURY OR DAMAGE TO PROPERTY.**

Each Owner acknowledges, understands, and covenants to inform his or her family members, and tenants and other occupants of Owner's property that Declarant, the Association, the Board and any committees, and Builders constructing homes and other improvements within the Subdivision are not insurers of personal safety. **EACH PERSON USING ANY SUCH RECREATIONAL FACILITIES, IF APPLICABLE OR ANY OTHER PORTION OF THE COMMON PROPERTIES ASSUMES ALL RISKS OF PERSONAL INJURY, DEATH, AND LOSS OR DAMAGE TO PROPERTY, RESULTING FROM THE USE AND ENJOYMENT OF ANY RECREATIONAL FACILITY OR OTHER PORTION OF THE COMMON PROPERTIES.** Each Owner agrees that Declarant, the Association, the Board and committees, and builders within the community shall not be liable to any person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury or death, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the use of any recreational facility or other portions of the Common Properties, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the Association, or any Builder within the community. THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.

**EACH OWNER ACKNOWLEDGES AND AGREES THAT THE ABOVE RELEASE FROM LIABILITY IS CONSIDERATION FOR, AND A CONDITION TO, THE USE AND ENJOYMENT OF THE RECREATIONAL FACILITIES AND OTHER COMMON PROPERTIES WITHIN THE SUBDIVISION AND THAT THIS ACKNOWLEDGMENT**

**AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT AND BUILDERS TO SELL, CONVEY, LEASE, AND/OR ALLOW THE USE OF LOTS WITHIN SUBDIVISION. ANY VIOLATION OF THIS RELEASE AGREEMENT BY AN OWNER, OR ANY OF OWNER'S FAMILY MEMBERS, TENANTS AND OTHER OCCUPANTS OF OWNER'S PROPERTY, OR THEIR RESPECTIVE GUESTS SHALL BE GROUNDS FOR THE SUSPENSION OR TERMINATION OF ALL OF SUCH PERSONS' USE PRIVILEGES IN SUCH FACILITIES.**

Section 15.11 Construction of Declaration and All Association Documents.

The provisions of this Declaration and all other documents of the Association shall be liberally construed to give effect to its intended purpose. All doubts regarding the meaning, significance or effect of a provision in this Declaration or other documents of the Association, shall be resolved in favor of the operation of the Association and its enforcement of the Declaration.

Section 15.12 City Right to Assume Association Rights and Responsibilities. In the event that the Association fails in its obligations hereunder to collect Assessments for maintenance of, or fails to maintain the Common Properties as required under the City Subdivision Ordinance (including, without limitation, Section 142-197 of the City's Subdivision Ordinance), the City may assume the rights of the Association hereunder to levy Assessments on the Owners and Lots within the Subdivision, and to maintain the Common Properties, as may be required to ensure compliance with such City Subdivision Ordinance (including, without limitation, Section 142-197 of the City's Subdivision Ordinance).

THE ASSOCIATION SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY FOR, FROM, AND AGAINST ANY CLAIMS OR LIABILITY RELATED TO THE COMMON PROPERTIES AND/OR THE CITY'S EXERCISE OF ITS RIGHTS UNDER THIS SECTION 15.12, IT BEING UNDERSTOOD AND AGREED THAT UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE ASSOCIATION OR ANY OWNER OR THEIR RESPECTIVE HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS FOR ANY DAMAGES, INJURIES (INCLUDING DEATH), AND/OR LIABILITY RESULTING FROM ANY COMMON PROPERTIES OR THE CITY'S MAINTENANCE AND/OR REPAIR THEREOF.

Section 15.13 Liability Limitations; Indemnification. No Declarant or Managing Agent, or their respective directors, officers, agents, members, employees, or representatives, or any member of the Board or the REVIEWER or other officer, agent or representative of the Association (collectively, the "Indemnified Parties"), shall be personally liable for the debts, obligations or liabilities of the Association. The Indemnified Parties shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or as otherwise expressly provided in the Association Documents. The Indemnified Parties shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and **THE ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM ANY AND ALL EXPENSES, LOSS OR LIABILITY TO OTHERS ON**

ACCOUNT OF ANY SUCH CONTRACT OR COMMITMENT (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS). IN ADDITION, EACH INDEMNIFIED PARTY SHALL BE INDEMNIFIED AND HELD HARMLESS BY THE ASSOCIATION, AS A COMMON EXPENSE OF THE ASSOCIATION, FROM ANY EXPENSE, LOSS OR LIABILITY TO OTHERS (TO THE EXTENT NOT COVERED BY INSURANCE PROCEEDS) BY REASONS OF HAVING SERVED AS SUCH DIRECTOR, OFFICER, AGENT, MEMBER, EMPLOYEE AND/OR REPRESENTATIVE AND IN SUCH CAPACITY AND AGAINST ALL EXPENSES, LOSSES AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND REASONABLE ATTORNEYS' FEES, INCURRED BY OR IMPOSED UPON SUCH INDEMNIFIED PARTY IN CONNECTION WITH ANY PROCEEDING TO WHICH SUCH PERSON MAY BE A PARTY OR HAVE BECOME INVOLVED BY REASON OF BEING SUCH DIRECTOR, OFFICER, AGENT, MEMBER, EMPLOYEE AND/OR REPRESENTATIVE AT THE TIME ANY SUCH EXPENSES, LOSSES OR LIABILITIES ARE INCURRED SUBJECT TO ANY PROVISIONS REGARDING INDEMNITY CONTAINED IN THE ASSOCIATION DOCUMENTS, EXCEPT IN CASES WHEREIN THE EXPENSES, LOSSES AND LIABILITIES ARISE FROM A PROCEEDING IN WHICH SUCH INDEMNIFIED PARTY IS ADJUDICATED GUILTY OF WILLFUL MISFEASANCE OR MALFEASANCE, MISCONDUCT OR BAD FAITH IN THE PERFORMANCE OF SUCH PERSON'S DUTIES OR INTENTIONAL WRONGFUL ACTS OR ANY ACT EXPRESSLY SPECIFIED IN THE ASSOCIATION DOCUMENTS AS AN ACT FOR WHICH ANY LIMITATION OF LIABILITY SET FORTH IN THE ASSOCIATION DOCUMENTS IS NOT APPLICABLE; PROVIDED, HOWEVER, THIS INDEMNITY DOES COVER LIABILITIES RESULTING FROM SUCH INDEMNIFIED PARTY'S NEGLIGENCE. AN INDEMNIFIED PARTY IS NOT LIABLE FOR A MISTAKE OF JUDGMENT, NEGLIGENT OR OTHERWISE. AN INDEMNIFIED PARTY IS LIABLE FOR HIS OR HER WILLFUL MISFEASANCE, MALFEASANCE, MISCONDUCT, OR BAD FAITH. THIS RIGHT TO INDEMNIFICATION DOES NOT EXCLUDE ANY OTHER RIGHTS TO WHICH PRESENT OR FORMER INDEMNIFIED PARTIES MAY BE ENTITLED. ANY RIGHT TO INDEMNIFICATION PROVIDED HEREIN SHALL NOT BE EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH A DIRECTOR, OFFICER, AGENT, MEMBER, EMPLOYEE AND/OR REPRESENTATIVE, OR FORMER DIRECTOR, OFFICER, AGENT, MEMBER, EMPLOYEE AND/OR REPRESENTATIVE, MAY BE ENTITLED. THE ASSOCIATION MAY MAINTAIN AS A COMMON EXPENSE GENERAL LIABILITY AND DIRECTORS' AND OFFICERS' LIABILITY INSURANCE TO FUND THIS OBLIGATION. ADDITIONALLY, THE ASSOCIATION MAY INDEMNIFY A PERSON WHO IS OR WAS AN EMPLOYEE, TRUSTEE, AGENT, OR ATTORNEY OF THE ASSOCIATION, AGAINST ANY LIABILITY ASSERTED AGAINST HIM AND INCURRED BY HIM IN THAT CAPACITY AND ARISING OUT OF THAT CAPACITY. Any insurance policies obtained by the Association shall name the Declarant and Managing Agent as "additional Insured" on such policies.

ADDITIONALLY, THE ASSOCIATION MAY INDEMNIFY A PERSON WHO IS OR WAS AN EMPLOYEE, TRUSTEE, AGENT, OR ATTORNEY OF THE ASSOCIATION, AGAINST ANY LIABILITY ASSERTED AGAINST HIM AND INCURRED BY HIM IN THAT CAPACITY AND ARISING OUT OF THAT CAPACITY.



## **ARTICLE XVI DISPUTE RESOLUTION**

Section 16.1 **INTRODUCTION & DEFINITIONS.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. The provisions of this Article XVI shall be specifically enforceable under applicable law in any court having jurisdiction thereof. Notwithstanding anything contained in the Documents, this Article XVI may only be amended with the prior written approval of the Declarant, and Owners holding 100% of votes in the Association. As used in this Article only, the following words, when capitalized, have the following specified meanings:

16.1.1 "Claim" means:

- a. Claims relating to the rights and/or duties of Declarant, the Association, any Managing Agent engaged by the Declarant or the Association, or the Reviewer, under the Governing Documents.
- b. Claims relating to the acts or omissions of the Declarant, the Association or a Board member or officer of the Association during Declarant's control and administration of the Association, and any claim asserted against the Reviewer.
- c. Claims relating to the design or construction of the Property, including Common Properties or improvements thereon, residences, buildings, or any improvements located on the Lots.

16.1.2 "Claimant" means any Party having a Claim against any other Party.

16.1.3 "Respondent" means any Party against which a Claim has been asserted by a Claimant.

Section 16.2 **MANDATORY PROCEDURES.** Claimant may not initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in Section 16.9 below, a Claim will be resolved by binding arbitration.

Section 16.3 **CLAIM AFFECTING COMMON PROPERTY(IES).** The Association does not have the power or right to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings: (1) in the name of or on behalf of any Owner (whether one or more); or (2) pertaining to a Claim, as defined in Section 16.1.1 below, relating to the design or construction of improvements on a Lot (whether one or more), including residences or other improvements thereon. In the event the Association or an Owner asserts a Claim related to the Common Properties, as a precondition to providing the Notice defined in Section 16.5, initiating the mandatory dispute resolution procedures set forth in this Article XVI, or taking any other action

to prosecute a Claim related to the Common Properties, the Association or Owner, as applicable, must:

16.3.1 Independent Report on the Condition of the Common Properties. Obtain an independent third-party report (the "Common Area Report") from a licensed professional engineer which: (1) identifies the Common Properties subject to the Claim including the present physical condition of the Common Properties; (2) describes any modification, maintenance, or repairs to the Common Properties performed by the Owner(s) and/or the Association; (3) provides specific and detailed recommendations regarding remediation and/or repair of the Common Properties subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Association or an Owner and paid for by the Association or Owner, as applicable, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or Owner in the Claim. As a precondition to providing the Notice described in Section 16.5, the Association or Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date of receipt of such notice, to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Common Area Report, the specific Common Properties to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Common Area Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in Section 16.5, the Association or the Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Common Area Report.

16.3.2 Claim by the Association - Owner Meeting and Approval. If the Claim is prosecuted by the Association, the Association must first obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in Section 16.5, initiate the mandatory dispute resolution procedures set forth in this Article XVI, or take any other action to prosecute a Claim, which approval from Members must be obtained at a special meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (1) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (2) a copy of the Common Area Report; (3) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the claim (the "Engagement Letter"); (4) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not proceed with the Claim; (5) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (6) an estimate of the impact on the value of each residence if the Claim is prosecuted and an estimate of the impact on the value of each residence after resolution of the Claim; (7) an estimate of the impact on the marketability of each residence if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each residence

during and after resolution of the Claim; (8) the manner in which the Association proposes to fund the cost of prosecuting the Claim; and (9) the impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party. The notice required by this paragraph must be prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association or Owner, as applicable, in the Claim. In the event Members approve providing the Notice described in Section 16.5, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

Section 16.4 CLAIM BY OWNERS - IMPROVEMENTS ON LOTS. Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to an Owner by the Declarant relating to the design or construction of any improvements located on a Lot, then this Article XVI will only apply to the extent that this Article XVI is more restrictive than such Owner's warranty, as determined in the sole discretion of the Declarant providing such warranty (if any). If a warranty has not been provided to an Owner relating to the design or construction of any improvements located on a Lot, then this Article XVI will apply. If an Owner brings a Claim, as defined in Section 16.1.1, relating to the design or construction of any improvements located on a Lot (whether one or more), as a precondition to providing the Notice defined in Section 16.5, initiating the mandatory dispute resolution procedures set forth in this Article XVI, or taking any other action to prosecute a Claim, the Owner must obtain an independent third-party report (the "Owner Improvement Report") from a licensed professional engineer which: (1) identifies the improvements subject to the Claim including the present physical condition of the improvements; (2) describes any modification, maintenance, or repairs to the improvements performed by the Owner(s) and/or the Association; and (3) provides specific and detailed recommendations regarding remediation and/or repair of the improvements subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Owner and paid for by the Owner, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Owner in the Claim. As a precondition to providing the Notice described in Section 16.5, the Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date of receipt of such notice, to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Owner Improvement Report, the specific improvements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Owner Improvement Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in Section 16.5, the Owner shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Owner Improvement Report.

Section 16.5 NOTICE. Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section. For Claims governed by Chapter 27 of the Texas Property Code, the time period for

negotiation in Section 16.6 below, is equivalent to the sixty (60) day period under Section 27.004 of the Texas Property Code. If a Claim is subject to Chapter 27 of the Texas Property Code, the Claimant and Respondent are advised, in addition to compliance with Section 16.6, to comply with the terms and provisions of Section 27.004 during such sixty (60) day period. Section 16.6 does not modify or extend the time period set forth in Section 27.004 of the Texas Property Code. Failure to comply with the time periods or actions specified in Section 27.004 could affect a Claim if the Claim is subject to Chapter 27 of the Texas Property Code. The one hundred and twenty (120) day period for mediation set forth in Section 16.7 below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to Section 16.7 is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) a true and correct copy of the Common Area Report; (b) a copy of the Engagement Letter; (c) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Common Property(ies) which forms the basis of the Claim; (d) a true and correct copy of the special meeting notice provided to Members in accordance with Section 16.3.2 above; and (e) reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice. If the Claimant is not the Association and pertains to the Common Property(ies), the Notice will also include a true and correct copy of the Common Area Report. If the Claimant is not the Association and pertains to improvements on a Lot, the Notice will also include a true and correct copy of the Owner Improvement Report.

Section 16.6 NEGOTIATION. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action. The Board may establish a committee comprised of three (3) Members appointed by the Board to aid in the negotiation and resolution of any Claims (the "Ombudsperson Committee") during this sixty (60) day period, and the Board may adopt Rules requiring any Claims be first heard by such Ombudsperson Committee.

Section 16.7 MEDIATION. If the Parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the Parties), Claimant will have thirty additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the Parties mutually agree. The mediator must have at least five years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the thirty-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

Section 16.8 TERMINATION OF MEDIATION. If the Parties do not settle the Claim within 30 days after submission to mediation or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

Section 16.9 BINDING ARBITRATION-CLAIMS. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this Section 16.9.

16.9.1 Governing Rules. If a Claim has not been resolved after mediation as required by Section 16.7, the Claim will be resolved by binding arbitration in accordance with the terms of this Section 16.9 and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Collin County, Texas. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this Section 16.9, this Section 16.9 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal except as provided in Section 16.9.4, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

(a) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(b) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(c) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

16.9.2 Exceptions to Arbitration: Preservation of Remedies. No provision of, nor the exercise of any rights under, this Section 16.9 will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal,

that is involved in a Claim, including, without limitation, rights and remedies relating to: (1) exercising self-help remedies (including set-off rights); or (2) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

**16.9.3 Statute of Limitations.** All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Section 16.9.

**16.9.4 Scope of Award: Modification or Vacation of Award.** The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this Section 16.9 and subject to Section 16.10 below (attorney's fees and costs may not be awarded by the arbitrator); provided, however, that for a Claim, or any portion of a Claim governed by Chapter 27 of the Texas Property Code, or any successor statute, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (1) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (2) conclusions of law that are erroneous; (3) an error of federal or state law; or (4) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential, or punitive damages for any Claim.

**16.9.5 Other Matters.** To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Collin County, Texas. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and Applicable Law. Each party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

**Section 16.10 ALLOCATION OF COSTS.** Notwithstanding any provision in this Declaration to the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

Section 16.11. GENERAL PROVISIONS. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not Party to Claimant's Claim.

Section 16.12 PERIOD OF LIMITATION.

16.12.1 For Actions by an Owner. The exclusive period of limitation for any of the Parties to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of a Residence, shall be the earliest of: (1) for Claims alleging construction defect or defective design, two years and one day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; (2) for Claims other than those alleging construction defect or defective design, four years and one day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; or (3) for all Claims, the applicable statute of limitations under Texas law. In no event shall this Section 16.12.1 be interpreted to extend any period of limitations under Texas law.

16.12.2 For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Property(ies), shall be the earliest of: (1) for Claims alleging construction defect or defective design, two years and one day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; (2) for Claims other than those alleging construction defect or defective design of the Common Property(ies), four years and one day from the date that the Association discovered or reasonably should have discovered evidence of the Claim; or (3) for all Claims, the applicable statute of limitations under Texas law. In no event shall this Section 16.12.2 be interpreted to extend any period of limitations under Texas law.

Section 16.13 LITIGATION APPROVAL & SETTLEMENT. The Association must levy a Special Assessment to fund the estimated costs of arbitration, including estimated attorney's fees, conducted pursuant to this Article XVI or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

Section 16.14 LIMITATION ON CONSOLIDATION OR JOINDER. No mediation, arbitration, or other action arising out of or relating to this Declaration or any other Documents shall include, by consolidation or joinder or in any other manner, the Declarant, the Association, any Managing Agent engaged by the Declarant, the Association, or the Architectural Reviewer as a "Respondent" in such Claim, except by written consent containing specific reference to this Declaration signed by the Declarant, the Association, any Managing Agent engaged by the Declarant or the Association, or the Architectural Reviewer named as Respondent, as applicable, the Claimant, and any other person or entity sought to be joined. Consent to mediation, arbitration or other proceeding involving an additional person or entity shall not constitute consent to mediation, arbitration or other proceeding to resolve a Claim not described therein or with a person or entity not named or described therein. Notwithstanding the foregoing, the Declarant if named as a "Respondent" in a Claim, may, at its option and in its sole and absolute discretion, elect to join or

consolidate mediation or arbitration with a Claimant and other Claimant(s) or any other party having an interest in the proceedings. Each Owner by taking title to any Lot hereby consents to such joinder or consolidation, which may be ordered at the sole discretion or election of the Declarant.

(Signature on next page)



EXECUTED to be effective as of 4 day of October, 2019.

CTMGT Frisco 122, LLC,  
a Texas limited liability company

By: Centamtar Terras, LLC  
a Texas limited liability company  
Its Manager

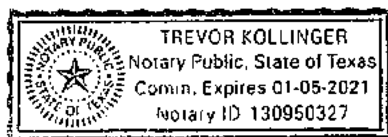
By: CTMGT, LLC  
a Texas limited liability company  
Its Manager

By: Mehrdad Moayed  
Name: Mehrdad Moayed  
Its: Manager

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on the 4 day of October, 2019, by Mehrdad Moayed, Manager of CTMGT, LLC, a Texas limited liability company, as Manager of Centamtar Terras, LLC, a Texas limited liability company, as Manager of CTMGT Frisco 122, LLC, a Texas limited liability company on behalf of said company.

SEAL



T Kollinger  
Notary Public, State of Texas

**Exhibit "A"**  
**TO**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS FOR**  
**VILLAGES AT CREEKWOOD**

**Property Description**

#### LEGAL DESCRIPTION

BEING a tract of land situated in the Major Sanders Survey, Abstract No. 1183, the M.E.P. & P. RR. CO. Survey, Abstract No. 919, and the A. Sparks Survey, Abstract No. 1491, City of Frisco, Denton County, Texas, the subject tract being a portion of a tract of land conveyed to CTMGT FRISCO 122, L.L.C. and CENTURION ACQUISITIONS, L.P. according to the deed recorded in Volume 2771, Page 937 of the Deed Records Denton County, Texas (DRDCT), and a portion of a tract conveyed to CTMGT FRISCO 122, L.L.C. and CENTURION ACQUISITIONS, L.P. according to the deed recorded in Document Number 2013-40596 of the Deed Records, Denton County, Texas (DRDCT), the subject tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod with a yellow cap stamped "SPIARSENG" set at the southwest corner of said subject tract, same being the southeast corner of a remaining tract of land conveyed to Frisco Lakes North, Ltd., according to Document Number 2009-54493 (OPRDCT), said point being in the north right-of-way line of Stonebrook Parkway;

THENCE, N 00°49'34" W, along the east line of said Frisco Lakes North, Ltd. tract, and the east line of a tract conveyed to Willie Faye Washington according to the deed recorded in Volume 5277, Page 3768 (DRDCT), a distance of 3192.01 feet to a 1/2" iron rod with a yellow cap stamped "SPIARSENG" set in the approximate centerline of King Road;

THENCE, N 89°18'36" E, along the approximate centerline of said King Road, a distance of 1269.76 feet to a 1/2" iron rod with a yellow cap stamped "SPIARSENG" set at corner;

THENCE, S 00°27'08" E, a distance of 29.99 feet to a 5/8" capped iron rod found in the south right-of-way line of said King Road;

THENCE, S 84°33'43" E, along said south right-of-way line, a distance of 186.28 feet to a 5/8" capped iron rod found at corner;

THENCE, N 89°20'02" E, continuing along said south right-of-way line, a distance of 254.54 feet to a 1/2" iron rod with a yellow cap stamped "SPIARSENG" set at the north end of a cut back line;

THENCE, S 45°36'09" E, a distance of 35.03 feet to a 5/8" capped iron rod found in the west right-of-way line of Witt Road;

THENCE, S 00°00'13" E, along said west right-of-way line, a distance of 98.22 feet to a 1/2" iron rod with a yellow cap stamped "SPIARSENG" set at corner;

THENCE, S 11°03'13" E, continuing along said west right-of-way line, a distance of 113.70 feet to 5/8" capped iron rod found;

THENCE, N 88°45'42" E, a distance of 24.40 feet to a 1/2" iron rod with a yellow cap stamped "SPIARSENG" set in the approximate centerline of said Witt Road;

THENCE, S 01°14'18" E, along said approximate centerline, a distance of 824.37 feet to a 1/2" iron rod with a yellow cap stamped "SPIARSENG" set at corner;

THENCE, N 89°06'58" E, a distance of 8.93 feet to a 1/2" iron rod with a yellow cap stamped "SPIARSENG" set at corner;

THENCE, S 00°16'06" E, a distance of 1952.31 feet to a 1/2" iron rod with a yellow cap stamped "SPIARSENG" set in the north right-of-way line of said Stonebrook Parkway;

THENCE, along said north right-of-way line and around a non-tangent curve to the left having a central angle of 33°44'04", a radius of 3083.00 feet, a chord of S 85°05'20" W - 1777.49 feet, an arc length of 1803.43 feet to the PLACE OF BEGINNING with the subject tract containing 5,379,085 square feet or 123.487 acres of land.

**Exhibit "B"**  
**TO**  
**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
VILLAGES AT CREEKWOOD**

**DECLARANT REPRESENTATIONS & RESERVATIONS**

**B.1. GENERAL PROVISIONS.**

B.1.1. Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Exhibit B.

B.1.2. General Reservation & Construction. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Exhibit B which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Exhibit and any other Document, this Exhibit B controls. This Exhibit B may not be amended without the prior written consent of Declarant. To the extent any proposed amendment is for the purpose of either amending the provisions of this Declaration or the Association's Agreements pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, Common Property(ies), private Streets or grounds that are the responsibility of the Association, prior written consent of the City may be required. The terms and provisions of this Exhibit B must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

B.1.3. Purpose of Development and Declarant Control Periods. This Exhibit B gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly build out and sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with ninety days' notice.

B.1.4. Definitions. As used in this Exhibit B and elsewhere in the Documents, the following words and phrases, when capitalized, have the following specified meanings:

- a. "Builder" means a person or entity which purchases, or contracts to purchase, a Lot from Declarant or from a Builder for the purpose of constructing a Residence for resale or under contract to an Owner other than Declarant. As used in this

Declaration, Builder does not refer to Declarant or to any home building or home marketing company that is an affiliate of Declarant.

b. "Declarant Control Period" means that period of time during which Declarant controls the operation of this Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period as may be stipulated in the Declaration or in the absence of such stipulation, a period not to exceed the earlier of:

- (1) twenty-five (25) years from date this Declaration is recorded.
- (2) the date title to the Lots and all other portions of the Property has been conveyed to Owners other than Builders or Declarant.

c. "Development Period" means that period of time during which Declarant reserves certain powers and rights under the Declaration to ensure the orderly development of the Property and any land to be annexed into such Property. The duration of the Development Period will be from the date this Declaration is recorded for a maximum period as may be stipulated in the Declaration or in the absence of such stipulation, a period not to exceed the earlier of:

- (1) twenty-five (25) years from date this Declaration is recorded.
- (2) the date on which Declarant files a notice of termination of the Development Period in the Official Public Records of Denton County, Texas.

B.1.5. Builders. Declarant, through its affiliates, intends to construct Single Family Residences on the Lots in connection with the sale of the Lots. However, Declarant may, without notice, sell some or all of the Lots to one or more Builders to improve the Lots with Residences to be sold and occupied.

B.2. DECLARANT CONTROL PERIOD RESERVATIONS. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

B.2.1. Officers & Directors. During the Declarant Control Period, the Board may consist of three (3) persons. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a "Leader;" provided, however, that on or before the date which is the earlier of (i) one hundred twenty (120) days after Declarant has sold seventy five percent (75%) of the Lots that may be developed within the Property, or (ii) seven (7) years after the date of recordation of this Declaration, at least one-third (1/3) of the directors on the Board shall be elected by non-Declarant Owners.

B.2.2. Weighted Votes. During the Declarant Control Period, the vote appurtenant to each Lot owned by Declarant is weighted twenty (20) times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Declarant Control Period, Declarant may cast the equivalent of twenty (20) votes for each Lot owned by Declarant on any issue before the Association. On termination of the Declarant Control Period and thereafter, the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes.

B.2.3. Budget Funding. During the Declarant Control Period Declarant authorizes the budget and any amendment thereto. At the Declarant's sole discretion, funds provided for the purpose of offsetting a deficit may be treated as a loan. Declarant is under no obligation to fund the Association in the case of any deficit or shortfall during the Declarant Control Period or thereafter. Declarant is not responsible for funding the Maintenance Fund / Working Capital Fund and may, at its sole discretion, require the Association to use Maintenance Fund / Working Capital Fund as well as any other reserve fund, restricted or not, which may be established during the Declarant Control Period when available to pay operating expenses prior to the Declarant funding any deficit.

B.2.4. Declarant Assessments. During the Declarant Control Period, any real property owned by Declarant is not subject to Assessments by the Association.

B.2.5. Builder Obligations. During the Declarant Control Period only, Declarant has the right but not the duty (1) to reduce or waive the Assessment obligation of a Builder, and (2) to exempt a Builder from any or all liabilities for transfer-related fees charged by the Association or its manager, provided the agreement is in writing. Absent such an exemption, any Builder who owns a Lot is liable for all Assessments and other fees charged by the Association in the same manner as any Owner.

B.2.6. Commencement of Assessments. During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of Regular Assessments until a certain number of Lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies Regular Assessments against the Lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.

B.2.7. Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

B.2.8. Budget Control. *During the Declarant Control Period, the right of Owners to veto Budgets, Assessment increases or Special Assessments is not effective and may not be exercised.*

**B.2.9. Organizational Meeting.** Within one hundred twenty (120) days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call an organizational meeting of the Members of the Association for the purpose of electing, by vote of the Owners, directors to the Board. Written notice of the organizational meeting must be given to an Owner of each Lot at least ten (10) days but not more than sixty (60) days before the meeting. For the organizational meeting, Owners of twenty percent (20%) of the Lots constitute a quorum. The directors elected at the organizational meeting will serve as the Board until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin. At this transition meeting, the Declarant will transfer control over all utilities related to the Common Property(ies) owned by the Association and Declarant will provide information to the Association, if not already done so, relating to the total costs to date related to the operation and maintenance of the Common Property(ies) and Areas of Common Responsibility.

**B.3. DEVELOPMENT PERIOD RESERVATIONS.** Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

**B.3.1. Changes in Development Plan.** Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the Owner of the land or Lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of Lots and Streets; (b) change the minimum Residence size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property. WITHOUT LIMITING THE FOREGOING, DECLARANT HEREBY RESERVES THE RIGHT DURING THE DEVELOPMENT PERIOD, WITHOUT APPROVAL OR CONSENT OF ANY OTHER OWNER OR THE ASSOCIATION, TO FURTHER SUDIVIDE THE REAL PROPERTY OF THE COMMON PROPERTY(IES) INTO ADDITIONAL LOTS AND/OR COMMON PROPERTY(IES) NOTWITHSTANDING ANY SUCH CHANGE SHALL BE SUBJECT TO APPROVAL BY A GOVERNMENTAL ENTITY, IF APPLICABLE.

**B.3.2. Builder Limitations.** Declarant may require its approval (which may not be unreasonably withheld) of all documents and materials used by a Builder in connection with the development and sale of Lots, including without limitation promotional materials; deed restrictions; forms for deeds, Lot sales, and Lot closings. Without Declarant's prior written approval, a Builder may not use a sales office or model in the Property to market homes, Lots, or other products located outside the Property.

**B.3.3. Architectural Control.** During the Development Period, Declarant has the absolute right to serve as the Architectural Reviewer. Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights as Architectural Reviewer and this Exhibit B to (1) an ACC appointed by the Declarant or the Board, or (2) a committee comprised of architects,

engineers, or other persons who may or may not be Members of the Association. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant also has the unilateral right to exercise architectural control over vacant Lots in the Property. The Association, the Board of Directors, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of new Residences and related improvements on vacant Lots. Reviewers appointed by the Declarant or the Board are eligible to receive fees for the receipt, review, and processing of architectural plans and requests for modifications to include rush request fees for the expediting of a request.

B.3.4. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents to include Bylaws, without consent of the Board, other Owners or mortgagee, or Members for any purpose, including without limitation the following purposes:

- a. To create Lots, easements, and Common Property(ies) within the Property.
- b. To subdivide, combine, or reconfigure Lots.
- c. To convert Lots into Common Property(ies) and Common Property(ies) back to Lots.
- d. To modify the construction and use restrictions of this Declaration.
- e. To merge the Association with another property owners association.
- f. To comply with the requirements of an underwriting lender.
- g. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- h. To enable any reputable title insurance company to issue title insurance coverage on the Lots.
- i. To enable an institutional or governmental lender to make or purchase mortgage loans on the Lots.
- j. To change the name or entity of Declarant.
- k. To change the name of the addition in which the Property is located.
- l. To change the name of the Association.



m. For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.

**B.3.5. Completion.** During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the Plat; (2) the right to sell or lease any Lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the Common Property(ies), and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

**B.3.6. Easement to Inspect & Right to Correct.** During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a Lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

**B.3.7. Promotion.** During the Development Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Residents, for purposes of promoting, identifying, and marketing the Property and/or Declarant's Residences, Lots, developments, or other products located outside the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and broker's parties – at the Property to promote the sale of Lots. During the Development Period, Declarant also reserves (1) the right to permit Builders to place signs and promotional materials on the Property and (2) the right to exempt Builders from the sign restriction in this Declaration.

**B.3.8. Offices.** During the Development Period, Declarant reserves for itself the right to use Residences owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to Lots

or Residences used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

**B.3.9. Access.** During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property and the Property Subject to Annexation (as hereinafter defined), and for discharging Declarant's obligations under this Declaration.

Declarant also has the right to provide a reasonable means of access for the home buying public through any existing or future gate that restricts vehicular access to the Property in connection with the active marketing of Lots and Residences by Declarant or Builders, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

**B.3.10. Utility Easements.** During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any Lot, as shown on the Plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, cable, internet service, and security. To exercise this right as to land that is not a Common Area or not owned by Declarant, Declarant must have the prior written consent of the Owner.

**B.3.11. Assessments.** For the duration of the Development Period, any Lot owned by Declarant is not subject to mandatory Assessment by the Association until the date Declarant transfers title to an Owner other than Declarant. If Declarant owns a Lot on the expiration or termination of the Development Period, from that day forward Declarant is liable for Assessments on each Lot owned by Declarant in the same manner as any Owner.

**B.3.12. Land Transfers.** During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Documents, including without limitation on an obligation for transfer or Resale Certificate fees, and the transfer-related provisions of this Declaration. The application of this provision includes without limitation Declarant's Lot take-downs, Declarant's sale of Lots to Builders, and Declarant's sale of Lots to homebuyers.

**B.4. COMMON PROPERTY(IES).** Declarant will convey title to the Common Property(ies), including any and all facilities, structures, improvements and systems of the Common Property(ies) owned by Declarant, to the Association by one or more deeds – with or without warranty. Any initial Common Area improvements will be installed, constructed, or authorized by Declarant, the cost of which is not a Common Expense of the Association. At the time of conveyance to the Association, the Common Property(ies) will be free to encumbrance except for the property taxes accruing for the year of conveyance the terms of this Declaration and matters

reflected on the Plat. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of Common Property(ies) requiring inspection, evaluation, acceptance, or approval of Common Area improvements by the Owners. Declarant is under no contractual or other obligation to provide amenities of any kind or type.

**B.5. WORKING CAPITAL FUND.** Declarant may (but is not required to) establish a working capital fund for the Association by requiring purchasers of Lots to make a one-time contribution to this fund, subject to the following conditions:

a. The amount of the contribution to this fund, if applicable, may be equal to fifty percent (50%) of the then current annual assessment and will be collected on the closing of the sale of the Lot to any Owner other than Declarant, a Successor Declarant, Declarant-affiliate or a Builder and may be used for any Association related expense. A Working Capital Fund is not the same as the Acquisition Assessment described in Article 10, Section 10.4 of the Declaration. After the Declarant Control Period the Board of Directors may establish a Working Capital Fund if such a fund is not established during the Declarant Control Period.

b. Subject to the foregoing Builder provision, a Lot's contribution shall be collected from the Owner at closing upon sale of Lot from Builder to Owner; Builders may be subject to same or lesser type fees and Declarant acknowledges that this condition may create an inequity among the Owners, but deems it a necessary response to the diversification of marketing and closing Lot sales.

d. Contributions to the fund are not advance payments of Regular Assessments or Special Assessments and are not refundable to the contributor by the Association or by Declarant. This may not be construed to prevent a selling Owner from negotiating reimbursement of the contribution from a purchaser.

e. Declarant will transfer the balance of the working capital fund, if applicable, to the Association on or before termination of the Declarant Control Period. Declarant may not use the fund to defray Declarant's personal expenses or construction costs however, Declarant may, if necessary, utilize funds for the Association's operating needs in the event of a deficit in the Association's operating budget.

**B.6. SUCCESSOR DECLARANT.** Declarant may designate one or more Successor Declarants' (herein so called) for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Real Property Records of Denton County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of

Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

**B.7. DECLARANT'S RIGHT TO ANNEX ADJACENT PROPERTY.** Declarant hereby reserves for itself and its affiliates and/or any of their respective successors and assigns the right to annex any real property in the vicinity of the Property (the "Property Subject to Annexation") into the scheme of this Declaration as provided in this Declaration. Notwithstanding anything herein or otherwise to the contrary, Declarant and/or such affiliates, successors and/or assigns, subject to annexation of same into the real property, shall have the exclusive unilateral right, privilege and option (but never an obligation), from time to time, for as long as Declarant owns any portion of the Property or Property Subject to Annexation, to annex (a) all or any portion of the Property Subject to Annexation owned by Declarant, and (b) subject to the provisions of this Declaration and the jurisdiction of the Association, any additional property located adjacent to or in the immediate vicinity of the Property (collectively, the "Annexed Land"), by filing in the Official Public Records of Denton County, Texas, a Supplemental Declaration expressly annexing any such Annexed Land. Such Supplemental Declaration shall not require the vote of the Owners, the Members of the Association, or approval by the Board or other action of the Association or any other Person, subject to the prior annexation of such Annexed Land into the real property. Any such annexation shall be effective upon the filing of such Supplemental Declaration in the Official Public Records of Denton County, Texas (with consent of Owner(s) of the Annexed Land, if not Declarant). Declarant shall also have the unilateral right to transfer to any successor Declarant, Declarant's right, privilege and option to annex Annexed Land, provided that such successor Declarant shall be the developer of at least a portion of the Annexed Land and shall be expressly designated by Declarant in writing to be the successor or assignee to all or any part of Declarant's rights hereunder.

**B.7.1. Procedure for Annexation.** Any such annexation shall be accomplished by the execution by Declarant, and the filing for record by Declarant (or the other Owner of the property being added or annexed, to the extent such other Owner has received a written assignment from Declarant of the right to annex hereunder) of a Supplemental Declaration which must set out and provide for the following:

(i) A legally sufficient description of the Annexed Land being added or annexed, which Annexed Land must as a condition precedent to such annexation be included in the real property;

(ii) That the Annexed Land is being annexed in accordance with and subject to the provisions of this Declaration, and that the Annexed Land being annexed shall be developed, held, used, sold and conveyed in accordance with, and subject to, the provisions of this Declaration as theretofore and thereafter amended; provided, however, that if any Lots or portions thereof being so annexed are to be treated differently than any of the other Lots (whether such difference is applicable to other Lots included therein or to the Lots

now subject to this Declaration), the Supplemental Declaration should specify the details of such differential treatment and a general statement of the rationale and reasons for the difference in treatment, and if applicable, any other special or unique covenants, conditions, restrictions, easements or other requirements as may be applicable to all or any of the Lots or other portions of Annexed Land being annexed;

(iii) That all of the provisions of this Declaration, as amended, shall apply to the Annexed Land being added or annexed with the same force and effect as if said Annexed Land were originally included in this Declaration as part of the Initial Property, with the total number of Lots increased accordingly;

(iv) That an Assessment Lien is therein created and reserved in favor of the Association to secure collection of the Assessments as provided in this Declaration, and as provided for, authorized or contemplated in the Supplemental Declaration, and setting forth the first year Maintenance Assessments and the amount of any other then applicable Assessments (if any) for the Lots within the Annexed Land being made subject to this Declaration; and

(v) Such other provisions as the Declarant therein shall deem appropriate.

**B.7.2. Amendment.** The provisions of this B.7. or its sub-sections may not be amended without the express written consent of Declarant (and Declarant's successors and assigns in accordance with the terms hereof).

**B.7.3. No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any property to this Declaration and no Owner of the property excluded from this Declaration shall have any right to have such property annexed thereto.

**B.7.4. Effect of Annexation on Class B Membership.** In determining the number of Lots owned by the Declarant for the purpose of Class B Membership status the total number of Lots covered by this Declaration and located in such Declarant's portion of the Property, including all Lots acquired by the Declarant and annexed thereto, shall be considered. If Class B Membership has previously lapsed but annexation of additional property restores the ratio of Lots owned by the Declarant to the number required by Class B Membership, such Class B Membership shall be reinstated until it expires pursuant to the terms of the Declaration.

**[End of Exhibit B]**

**Exhibit "C"**  
**TO**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS FOR**  
**VILLAGES AT CREEKWOOD**

**Design Guidelines**

**These Design Guidelines may be amended at any time and from time to time by the Declarant or the Architectural Review Committee without consent or joinder of the Members.**

**PART ONE: LANDSCAPING, FENCES AND EXTERIOR ELEMENTS**

**SECTION 1.1 LANDSCAPING:**

Upon completion of each dwelling unit, each dwelling must comply with the landscaping requirements of any applicable City of Frisco ordinances and Association Rules. Notwithstanding compliance with the foregoing, the following landscape elements shall be installed prior to occupancy of the dwelling:

- 1.1.1 Sod: Each dwelling shall have full sod installed for the entire front and rear yard and a minimum of ten (10) feet back from the front wall face for each side yard, or to the side yard fence, whichever is greater. Proper irrigation systems must be installed including drip systems where necessary to ensure proper irrigation to sod, trees, and landscaping.
- 1.1.2 Trees: A large three-inch (3") caliper tree shall be planted in the right of way at the center of each Lot. For all Lots, a minimum of two (2) canopy trees with a minimum caliper of three and one-half inches (3-1/2"), measured at a point six (6) inches above ground level and 12 feet in height at the time of planting shall be required. At least one (1) of the trees shall be located in the front yard on all lots. Smaller lots may be allowed a smaller caliper tree such as (1) canopy tree with a minimum caliper of not less than three and one-half inches (3-1/2"). **Builder shall comply with all City of Frisco landscape requirements and ordinances. City of Frisco street tree guidelines may also apply.** Each homeowner shall be responsible for maintenance and preservation of trees located on their property and shall promptly replace dead trees within thirty (30) days when favorable planting weather exists or otherwise within sixty (60) days of loss occurrence. Protected trees may require a permit from the City of Frisco for removal.
- 1.1.3 Shrubbery and Planting Beds: Each Dwelling shall have a minimum of ten (10) one (1) gallon shrubs planted in a mulched planting bed; the planting bed shall have edging materials to separate the sod and bed mulch areas. The homeowner shall be responsible for the maintenance a preservation of the shrubs and planting bed, and shall promptly replace dead plants within thirty (30) days when favorable planting weather exists or otherwise within sixty (60) days of loss occurrence.

**SECTION 1.2 FENCES: Unless otherwise allowed by written permission of the Architectural Review Committee, all fences shall be six feet (6') in height.**

- 1.2.1 Major thoroughfares and Corner Lots: All fencing on corner lots and backing up to streets and major thoroughfares will be considered major thoroughfare fencing. Fencing, which shall be six feet (6'), board on board and pre-stained Spruce or better Fence, with steel posts mounted on the inside so as not to be visible, and wall construction shall comply with the details indicated in Exhibit Attachment 1.2.1.1. Fences located on corner lots may be subject to additional setbacks for line of sight regulations or restrictions at the ACC's sole discretion. In absence of any such line of sight regulations from the City the ACC retains the right to consider and require setbacks or alternate design and material compositions when it is deemed necessary and appropriate to do so to ensure safe driving conditions exist or are maintained around major thoroughfare or corner lots. All such fencing facing major thoroughfare shall be stained and preserved as follows:

Manufacturer:	Seal Rite
Color:	Medium Brown – or similar color acceptable to ACC

- 1.2.2 Standard Side and Rear Yard Fences – Interior Lots: For all interior lots, fences shall be six feet (6') in height, pre-stained Spruce or better board to board with steel posts mounted on the inside so as not to be visible and top rail. All fences to have step ups and step downs to adjust for grade. Exhibit Attachment 1.2.2.1. All portions of the fence that are viewable from the street shall be stained with the colors specified above at Section 1.2.1

- 1.2.3 Greenbelt Areas, Open Spaces and Parks: All lots adjacent to any Greenbelt area, Open Spaces and Parks shall comply with the City of Frisco zoning ordinances applicable to the Subdivision. If wrought iron fencing is a requirement, the fence shall have black finished minimum forty-eight inch (48") high wrought iron or tubular steel fences for the full width of rear lot lines and may be of a similar style as detailed in Exhibit 1.2.3.2. All fences shall be painted black using rust resistant paint and consistent; with little to no variation of design permitted. Fence areas shall be unobstructed by screening or other materials unless specifically approved in writing by the Association. The ACC may from time to time review requests to have fencing other than wrought iron. Any such request will be considered on a case by case basis and only if the City of Frisco ordinance allows it. NO other fencing other than wrought iron shall be used as required under this Section without the express written consent of the ACC.

Stain on fencing required. Any repair or replacement of a fence requires prior written permission of the ACC.

### **SECTION 1.3 MAIL BOXES:**

- 1.3.1 Mail boxes shall be cluster boxes. Cluster boxes shall be chosen by the Declarant or REVIEWER and shall comply with all applicable State and Federal postal requirements.
- 1.3.2 Mail Box Location: Cluster Boxes shall be located in an area approved by the Declarant and the U.S. Postal Service.

### **SECTION 1.4 FLAGS AND FLAGPOLES**

- 1.4.1 The only flags which may be displayed are: (i) the flag of the United States of America; (ii) the flag of the State of Texas; and (iii) an official or replica flag of any branch of the United States armed forces. No other types of flags, pennants, banners, kits or similar types of displays are permitted on a Lot if the display is visible from a street or Common Area without the prior written consent of the ACC.
- 1.4.2 The flag of the United States must be displayed in accordance with 4 U.S.C. Sections 5-10.
- 1.4.3 The flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code.
- 1.4.4 Any freestanding flagpole, or flagpole attached to a dwelling, shall be constructed of permanent, long-lasting materials. The materials used for the flagpole shall be harmonious with the dwelling, and must have a silver finish with a gold or silver ball at the top. The flagpole must not exceed three (3) inches in diameter.
- 1.4.5 The display of a flag, or the location and construction of the supporting flagpole, shall comply with applicable zoning ordinances, easements, and setbacks of record.
- 1.4.6 A displayed flag, and the flagpole on which it is flown, shall be maintained in good condition at all times. Any flag that is deteriorated must be replaced or removed. Any flagpole that is structurally unsafe or deteriorated shall be repaired, replaced, or removed.
- 1.4.7 Only one flagpole will be allowed per Lot. A flagpole can either be securely attached to the face of the dwelling (no other structure) or be a freestanding flagpole. A flagpole attached to the dwelling may not exceed 4 feet in length. A freestanding flagpole may not exceed 20 feet in height. Any freestanding flagpole must be located in either the front yard or backyard of a Lot, and there must be a distance of at least 5 feet between the flagpole and the property line.
- 1.4.8 Any flag flown or displayed on a freestanding flagpole may be no smaller than 3'x5' and no larger than 4'x6'.



- 1.4.9 Any flag flown or displayed on a flagpole attached to the dwelling may be no larger than 3'x5'.
- 1.4.10 Any freestanding flagpole must be equipped to minimize halyard noise. The preferred method is through the use of an internal halyard system. Alternatively, swivel snap hooks must be covered or "Quiet Halyard" Flag snaps installed. Neighbor complaints of noisy halyards are a basis to have flagpole removed until Owner resolves the noise complaint.
- 1.4.11 The illumination of a flag is allowed so long as it does not create a disturbance to other residents in the community. Solar powered, pole mounted light fixtures are preferred as opposed to ground mounted light fixtures. Compliance with all municipal requirements for electrical ground mounted installations must be certified by Owner. Flag illumination may not shine into another dwelling. Neighbor complaints regarding flag illumination are a basis to prohibit further illumination until Owner resolves complaint.
- 1.4.12 Flagpoles shall not be installed in Common Area or property maintained by the Association.
- 1.4.13 All freestanding flagpole installations must receive prior written approval from the Reviewer.

#### **SECTION 1.5 RAIN BARRELS OR RAINWATER HARVESTING SYTEMS**

- 1.5.1 Rain barrels or rain water harvesting systems and related system components (collectively, "Rain Barrels") may only be installed after receiving the written approval of the Reviewer.
- 1.5.2 Rain Barrels may not be installed upon or within common area of the Association.
- 1.5.3 Under no circumstances shall Rain Barrels be installed or located in or on any area within a Lot that is in-between the front of the property owner's home and an adjoining or adjacent street.
- 1.5.4 The rain barrel must be of color that is consistent with the color scheme of the property owner's home and may not contain or display any language or other content that is not typically displayed on such Rain Barrels as manufactured.
- 1.5.5 Rain Barrels may be located in the side-yard or back-yard of an owner's Residential Parcel so long as these may not be seen from a street, another Lot or any Common Property(ies) of the Association.
- 1.5.6 In the event the installation of Rain Barrels in the side-yard or back-yard of an owner's property in compliance with paragraph 1.5.5 above is impossible, the Reviewing Body may impose limitations or further requirements regarding the size, number and screening of Rain Barrels with the objective of screening the Rain

Barrels from public view to the greatest extent possible. The owner must have sufficient area on their Lot to accommodate the Rain Barrels.

- 1.5.7 Rain Barrels must be properly maintained at all times or removed by the owner.
- 1.5.8 Rain Barrels must be enclosed or covered.
- 1.5.9 Rain Barrels which are not properly maintained become unsightly or could serve as a breeding pool for mosquitoes must be removed by the owner from the Lot.

## **SECTION 1.6 RELIGIOUS DISPLAYS**

- 1.6.1 An owner may display or affix on the entry to the owner's or resident's dwelling one or more religious items, the display of which is motivated by the owner's or resident's sincere religious belief.
- 1.6.2 If displaying or affixing of a religious item on the entry to the owner's or resident's dwelling violates any of the following covenants, The Association may remove the item displayed:
  - (1) threatens the public health or safety;
  - (2) violates a law;
  - (3) contains language, graphics, or any display that is patently offensive to a passerby;
  - (4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or
  - (5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches
- 1.6.3 No owner or resident is authorized to use a material or color for an entry door or door frame of the owner's or resident's dwelling or make an alteration to the entry door or door frame that is not authorized by the Association, Declaration or otherwise expressly approved by the Architectural Control Committee.

## **PART TWO: DWELLING UNITS.**

**Replacing a roof without the prior written permission of the ACC is subject to a one-time fine up to \$500.00 and the ACC shall have the right to file a notice of violation for unauthorized modification on the Owner's account, resale, and/or with the County Clerk's Office.**

## **SECTION 2.1 ROOFS AND BANDING**

- 2.1.1 **Roof Pitch:** Roof Pitch for homes shall have a minimum of 6-in-12 slopes. Lower slopes may be allowed on certain building styles but, only with the prior written approval of the Reviewer.
- 2.1.2 **Roofing Materials:** Roofing materials shall be asphalt shingles with a minimum 30-year rated shingle having a minimum weight of 220 pounds per square (100 square feet) and have a weather wood or grey color. Other roofing materials or colors shall not be used without the prior written approval from the ACC.
- 2.1.3 **Dormers & Above Roof Chimneys:** Dormers and Chimney Chases, above roof structure and roofing materials, may be finished with an approved exterior grade material. All Fireplace flues shall be enclosed and finished; exposed pre-fabricated metal flue piping is prohibited.

## **SECTION 2.2 CERTAIN ROOFING MATERIALS**

- 2.2.1 Roofing shingles covered by this Section are exclusively those designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (iii) provide solar generation capabilities (collectively, "Roofing Shingles").
- 2.2.2 Roofing Shingles allowed under this Section 2.2 shall:
  - (1) resemble the shingles used or otherwise authorized for use in the community;
  - (2) be more durable than and are of equal or superior quality to the shingles used or otherwise authorized for use in the community.
  - (3) match the aesthetics of the property surrounding the property of the owner requesting permission to install the Roofing Shingles.
- 2.2.3 The owner requesting permission to install the Roofing Shingles will be solely responsible for accrediting, certifying and demonstrating to the Reviewer that the proposed installation is in full compliance with paragraphs a and b above.
- 2.2.4 Roofing Shingles shall be installed after receiving the written approval of the Reviewer.
- 2.2.5 Owners are hereby placed on notice that the installation of Roofing Materials may void or adversely affect other warranties.

## **SECTION 2.3 SOLAR PANELS**

- 2.3.1 Solar energy devices, including any related equipment or system components (collectively, "Solar Panels") may only be installed after receiving the written approval of the Architectural Control Committee.
- 2.3.2 Solar Panels may not be installed upon or within Common Property(ies) or any area which is maintained by the Association.
- 2.3.3 Solar Panels may only be installed on designated locations on the roof of a home, on any structure allowed under any Association dedicatory instrument, or within any fenced rear-yard or fenced-in patio of the owner's property, but only as allowed by the Reviewer.

### **Solar Panels may not be installed on the front elevation of the home.**

- 2.3.4 If located on the roof of a home, Solar Panels shall:
  - (1) not extend higher than or beyond the roofline;
  - (2) conform to the slope of the roof;
  - (3) have a top edge that is parallel to the roofline; and
  - (4) have a frame, support bracket, or wiring that is black or painted to match the color of the roof tiles or shingles of the roof. Piping must be painted to match the surface to which it is attached, i.e. the soffit and wall. Panels must blend with the color of the roof to the greatest extent possible.
- 2.3.5 If located in the fenced rear-yard or patio, Solar Panels shall not be taller than the fence line or visible from a Lot, Common Property(ies) or street.
- 2.3.6 The Reviewer may deny a request for the installation of Solar Panels if it determines that the placement of the Solar Panels, as proposed by the property owner, will create an interference with the use and enjoyment of land of neighboring owners.
- 2.3.7 Owners are hereby placed on notice that the installation of Solar Panels may void or adversely affect roof warranties. Any installation of Solar Panels which voids material warranties is not permitted and will be cause for the Solar Panels to be removed by the owner.
- 2.3.8 Solar Panels must be properly maintained at all times or removed by the owner.
- 2.3.9 Solar Panels which become non-functioning or inoperable must be removed by the owner of the property.

## SECTION 2.4 EXTERIOR WALLS

### 2.4.1 Exterior Wall Materials: Exterior walls shall comply with the requirements below.

Homes backing or siding a major thoroughfare, the portions of the wall exposed to the thoroughfare must be brick or another approved masonry material. Without the written consent of the ACC the only pre-approved masons are brick, stone, stone veneer, and 3-coat stucco system. NO exceptions to the material requirements will be allowed without the express written consent of the ACC.

2.4.1.1 Front Walls: All front wall surfaces shall be full (100%) masonry consisting of brick, stone, and/or stucco, except *siding may be used for hidden or concealed wall surfaces not directly visible from the lot front property line*. The use of two masonry materials on the fronts is encouraged. Siding can be used in limited quantities for upper gable areas that would create a "brick-on-wood" condition; this provision is for special conditions only and is not intended to reduce the essential 100% masonry requirement. Approval of the use of this provision is at the sole discretion of the Reviewer and the City of Frisco.

2.4.1.2 Side and Rear Walls: Side and rear wall surfaces may be constructed using a mixture of brick and exterior-grade siding. A minimum of 75% overall on sides and rear must consist of a masonry material other than Hardie plank. Except for homes backing major thoroughfares, if the 75% mason requirement is met on the sides, the rear may be 100% hardie for one-story homes and the second floor on two story homes may be exterior grade siding materials such as hardie.

2.4.1.3 Chimneys: Chimney wall structures that are a direct extension of an exterior wall shall match the requirement of said wall.

2.4.1.5 Required masonry percentages shall be calculated excluding exterior wall areas built on top of a roof.

## SECTION 2.5 WINDOWS

2.5.1 Windows shall be constructed of vinyl, divided light on all front windows, divided light on all windows backing siding collectors, parks or open spaces. Reflective glass is prohibited.

## SECTION 2.6 GARAGE

2.6.1 Only Garage Doors allowed shall be constructed of wood or metal with wood overlay. Each residence shall have an enclosed garage and shall conform to the requirements set forth herein. **Where a J-Swing garage is not utilized, the face of the garage shall be set back a minimum of twenty-five (25) feet from the property line.** The garage shall conform in design and materials with the main structure. No garage shall be used as a living quarters notwithstanding, this section shall not apply to the Declarant, Developer or Builders model homes. Garage doors shall be kept in good repair at all times. Doors should remain closed when not in use.

## SECTION 2.7 ADDRESS BLOCKS

2.7.1 All address blocks shall be cast stone.

## SECTION 2.8 ELEVATION AND BRICK USAGE

2.8.1 Same Plan with Same Elevation: The repeat of the same floor plan with the same elevation design shall be governed by the following provisions:

2.8.1.1 Dwelling units using the same floor plan and same elevation on the same side of the street shall be separated by a minimum of two (2) lots. A one (1) Lot separation will be permitted when a street intersection occurs, the street right-of-way serves as a Lot equivalent. Dwelling units using the same floor plan and same elevation for the opposite side of street shall not be constructed directly across from each other.

2.8.2 Repeat Brick Usage: All Dwelling submittals shall calculate the percentage coverage for each material as follows:

2.8.2.1 Same Side of Street: No combination of brick color, mortar color, and sand color shall be repeated for adjacent dwellings. Street and alley intersections are acceptable separation elements.

2.8.2.2 Opposite Side of Street: There are no restrictions for the use of brick color, mortar color, and sand color for dwelling units on opposing sides of the street.

2.8.2 Exterior Material Area Calculations: All Dwelling submittals shall calculate the percentage coverage for each material as follows:

2.8.2.1 Calculation Method: Calculations for material coverage percentages shall include all exposed areas of the wall surface, excluding window and door openings.

2.8.2.2 Calculation Format: Calculations shall indicate the area coverage for front, side, and rear wall areas. Calculations shall be submitted in the following format:

### Brick Calculations

<b>Overall</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
<b>Front</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
<b>Left</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
<b>Right</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
<b>Rear</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%

\*\* Openings removed from areas in all calculations

## SECTION 2.9 DEVELOPMENT STANDARDS AND ZONING ORDINANCE

2.9.1 All buildings and construction must comply with any City of Frisco Development Standards and/or Zoning Ordinance. All plans and elevations are contingent upon following the criteria as listed in the Design Guidelines and these Covenants, Conditions and Restrictions as well as the Development Standards required by the City of Frisco. **Builders are ultimately responsible for ensuring their plans meet such standards as described herein whether approved by the ACC or not. In the event of a discrepancy between the Design Guidelines, this Declaration and any City of Frisco Zoning Ordinance, the higher standard shall always prevail.**

Exhibit Attachment 1.2.1.1 – Major Thoroughfare and Corner Lot Fencing

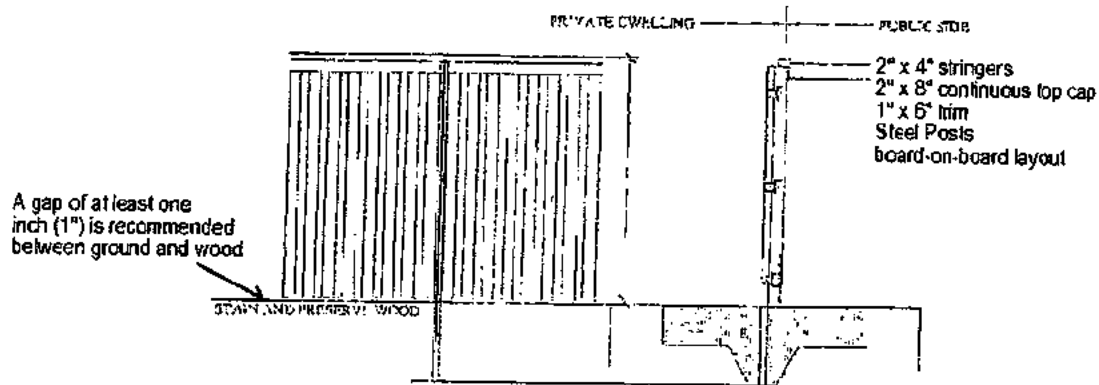
Exhibit Attachment 1.2.2.1 – Interior Lots

Exhibit Attachment – 1.2.3.2 – Wrought Iron Fencing

**END OF EXHIBIT C**

**EXHIBIT ATTACHMENT 1.2.1.1**  
**BOARD ON BOARD AND PRE-STAINED SPRUCE OR BETTER**  
**FENCING REQUIRED**

**SAMPLE PURPOSES ONLY. THE ACC HAS FINAL**  
**AUTHORITY ON FENCES. ALL FENCES MUST**  
**RECEIVE THE PRIOR WRITTEN CONSENT OF THE**  
**ACC PRIOR TO INSTALLATION.**



**Stain Color:**  
**Manufacturer Sherwin Williams Color: REFER TO SECTION 1.2.1 OF DESIGN GUIDELINES**  
**FOR APPROVED STAIN COLORS**

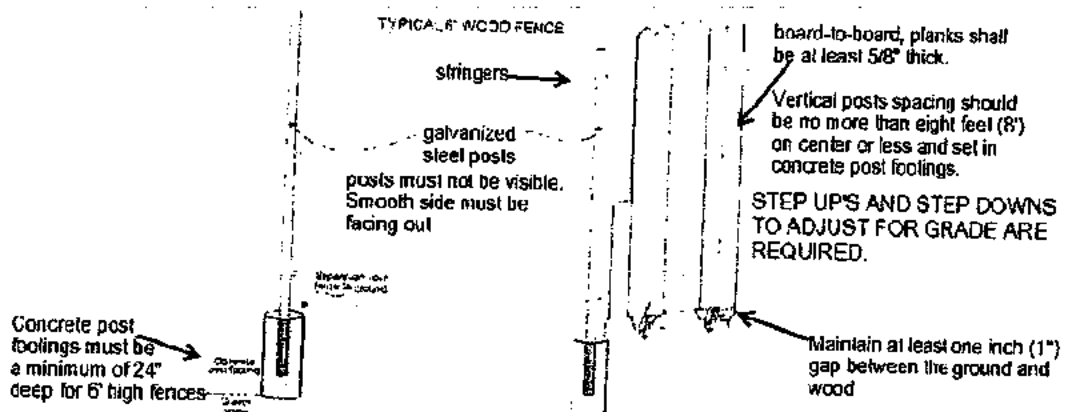
Minimum Fence height shall be six feet (6'). Heights greater than six feet (6') require prior written approval of the ACC. See Section 1.2.1 of the Design Guidelines for more information.

**Major Thoroughfare and Corner Lot**  
**Fence Details**



**EXHIBIT ATTACHMENT 1.2.2.1**  
**STANDARD SIDE AND REAR YARD FENCES**  
 DIAGRAM BELOW PROVIDED FOR SAMPLE PURPOSES ONLY

**Fences may be constructed of Spruce or better**



**TOP RAIL REQUIRED.** TRIM FOR SIDE AND REAR YARD FENCES ARE OPTIONAL HOWEVER IT IS PREFERRED. ALL EXTERIOR PORTIONS OF THE FENCE MUST BE STAINED WITH THE PRE-APPROVED STAIN COLOR NOTED IN SECTION 1.2.1 OF THE DESIGN GUIDELINES.

**SAMPLE PURPOSES ONLY. THE ACC HAS FINAL AUTHORITY ON FENCES. ALL FENCES MUST RECEIVE THE PRIOR WRITTEN CONSENT OF THE ACC PRIOR TO INSTALLATION.**

EXHIBIT 1.2.3.2  
Sample of wrought iron fencing allowed  
Fencing must be constructed of iron

**SAMPLE PURPOSES ONLY. THE ACC HAS FINAL  
AUTHORITY ON FENCES. ALL FENCES MUST  
RECEIVE THE PRIOR WRITTEN CONSENT OF THE  
ACC PRIOR TO INSTALLATION.**

Iron Fence Detail

