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**MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**THE FAIRWAYS  
OF  
HEATH CROSSING  
[HEATH, TEXAS]**

MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**THE FAIRWAYS**  
**OF**  
**HEATH CROSSING**  
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**MASTER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
THE FAIRWAYS OF  
HEATH CROSSING**

This Master Declaration of Covenants, Conditions and Restrictions (this "**Declaration**") is made by **TR HEATH PARTNERS, LTD.**, a Texas limited partnership (the "**Declarant**"), and is as follows:

**RECITALS:**

A. This Declaration is filed with respect to certain real property located in the City of Heath, Rockwall County, Texas, described on Exhibit "A", attached hereto and incorporated herein (the "**Property**"). Declarant is the owner of the Property.

B. Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property.

C. By the filing of this Declaration, Declarant serves notice that the Property is subject to the terms and provisions of this Declaration.

**NOW, THEREFORE**, it is hereby declared: (i) that the Property (or any portion thereof) will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

**ARTICLE 1  
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

**"Applicable Law"** means the statutes and public laws and ordinances in effect at the time a provision of the Restrictions is applied, and pertaining to the subject matter of the

Restriction provision. Statutes and ordinances specifically referenced in the Restrictions are "Applicable Law" on the date of the Restrictions, 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.

**"Architectural Control Committee"** or **"ACC"** means the committee created pursuant to this Declaration to review and approve or deny plans for the construction, placement, modification, alteration or remodeling of any Improvements on a Lot. As provided in *Article 7* below, the Declarant acts as the ACC and the ACC is not a committee of the Association until the Declarant has assigned its right to appoint and remove all ACC members to the Association in a Recorded written instrument.

**"Assessment"** or **"Assessments"** means assessments imposed by the Association under this Declaration.

**"Assessment Unit"** has the meaning set forth in *Section 6.06(b)*.

**"Association"** means The Fairways of Heath Crossing Homeowners Association, which will be created by Declarant to exercise the authority and assume the powers specified in *Article 4* and elsewhere in this Declaration.

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

**"Bulk Rate Contract" or "Bulk Rate Contracts"** means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial to all or a portion of the Property.

**"Bylaws"** means the Bylaws of the Association as adopted and as amended from time to time by a Majority of the Board.

**"Certificate"** means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

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

**"Common Area"** means any property not within a Lot and facilities that the Association owns or in which it otherwise holds rights or obligations, including any property or facilities held by the Declarant for the benefit of the Association or its Members. Common Area

includes any property that the Association holds under a lease, license, or any easement in favor of the Association.

**"Community Systems"** means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if any, installed by Declarant pursuant to any grant of easement or authority by Declarant within the Property.

**"Declarant"** means TR HEATH PARTNERS, LTD, a Texas limited partnership, its successors or assigns; provided that any assignment(s) of the rights of TR HEATH PARTNERS, LTD, as Declarant, must be expressly set forth in writing and Recorded.

Declarant enjoys special rights and privileges to help protect its investment in the Property which are described in this Declaration. Many of these rights do not terminate until either Declarant: (i) has conveyed all Lots which may be created out of the Property; or (ii) voluntarily terminates these rights by a Recorded written instrument.

**"Design Guidelines"** means the standards for design, construction, landscaping, and exterior items set forth in the respective Supplemental Declarations applicable to Phases Four A and B, and to Phase Five.

**"Development Period"** means the period of time beginning on the date when this Declaration has been Recorded, and ending at such time as Declarant no longer owns any portion of the Property, unless earlier terminated by Declarant. Declarant may terminate the Development Period by an instrument executed by Declarant and Recorded. The Development Period is the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property.

**"Homebuilder"** means an Owner (other than the Declarant) who acquires a Lot for the construction of a single family residence for resale to a third party and who will not occupy the home as a residence.

**"Improvement"** means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures,

exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

**"Lot"** means any portion of the Property designated by Declarant or as shown as a subdivided Lot on a Plat other than Common Area.

**"Majority"** means more than half.

**"Manager"** has the meaning set forth in *Section 4.06(h)*.

**"Members"** means every person or entity that holds membership privileges in the Association.

**"Mortgage"** or **"Mortgages"** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

**"Mortgagee"** or **"Mortgagees"** means the holder(s) of any Mortgage(s).

**"Owner"** means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

**"Phase"** as used herein, refers to Phase Four A, Phase Four B, and/or Phase Five of the Property.

**"Plat"** means a Recorded subdivision plat of any portion of the Property and any amendments thereto.

**"Property"** means that certain real property described on Exhibit "A", attached hereto and incorporated herein by reference, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 11.03* and *Section 11.04* of this Declaration.

**"Record, Recording, Recordation and Recorded"** means recorded or to be recorded in the Official Public Records of Rockwall County, Texas.

**"Resident"** means an occupant of a Lot, regardless of whether the person owns the Lot.

**"Restrictions"** means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, if adopted, Bylaws, Rules or policies promulgated by the Board, as adopted and amended from time to time. *See Table 1* for a summary of the Restrictions.



**"Rules"** means the rules set forth in the Supplemental Declarations for the regulation and management of each respective Phase of the Property, including any amendments to those instruments.

**"Solar Energy Device"** means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

**"Supplemental Declarations"** means that certain Supplemental Declaration of Covenants, Conditions and Restrictions for the Fairways of Heath Crossing Phase Four, applicable to Phases Four A and B, and that certain Supplemental Declaration of Covenants, Conditions and Restrictions for the Fairways of Heath Crossing Phase Five, applicable to Phase Five, both Supplemental Declarations are hereby incorporated herein by reference for all purposes.

## ARTICLE 2 USE RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

### 2.01 General.

(a) Conditions and Restrictions. All Lots within the Property will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Restrictions.

#### NOTICE

The Restrictions are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with the Restrictions, as they may change from time to time.

(b) Ordinances. Ordinances and requirements imposed by the City and any other local governmental authorities are applicable to all Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with such ordinances and regulations. Please be advised that the Restrictions do not purport to list or describe each ordinance or regulation which may be applicable to a Lot located within the Property. Each Owner is advised to review all ordinances, requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions

of any ordinances, requirements, regulations or encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

**2.02 Conceptual Plans.** All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property (collectively, the "Conceptual Plans") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Homebuilder or other developer of any portion of the Property makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property will likely extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

**2.03 Single-Family Residential Use.** The Lots shall be used solely for single-family residential purposes. The Lots may not be used for any other purposes without the prior written consent of the Declarant, which consent may be withheld by the Declarant in its sole and absolute discretion. No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of a Lot, except an Owner or Resident may conduct business activities within a residence so long as: (i) such activity complies with all the applicable zoning ordinances (if any); (ii) participation in the business activity is limited to the Owner(s) or Resident(s) of a residence; (iii) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business within the Property, sound, or smell from outside the residence; (iv) the business activity does not involve door-to-door solicitation of residents within the Property; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents within the Property as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the residence nor Lot will be considered open to the public. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis

which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or a Homebuilder.

Notwithstanding any provision in this Declaration to the contrary, until the earlier to occur of expiration or termination of the Development Period, or forty (40) years from the date this Declaration is Recorded:

(i) Declarant and/or its designees may construct and maintain upon portions of the Common Area, and any Lot owned by the Declarant such facilities and may conduct such activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its designees shall have an easement over and across the Common Area for access and use of such facilities at no charge; and

(ii) Declarant and/or its designees will have an access easement on and across the Common Area for the purpose of making, constructing, installing, maintaining and using Improvements upon the Common Area.

**2.04 Rentals.** Nothing in this Declaration will prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that: (i) all rentals must be for terms of at least six (6) months; and (ii) no portion of a Lot (other than the entire Lot) may be rented. All leases shall be in writing. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. Each lease must provide, or be deemed to provide, that the Board shall have the right to terminate the lease upon default by the tenant in observing any provisions of the Restrictions. Regardless of whether or not expressed in the applicable lease, all Owners shall be jointly and severally liable with the tenants of such Lot to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for any injury or damage to property in connection with such leases, whether caused by the Owner, its tenants or guests, except to the extent caused by the gross negligence or willful misconduct of the Association. All leases shall comply with and be subject to the provisions of the Restrictions and the provisions of same shall be deemed expressly incorporated into any lease of a Lot. This Section 2.04 shall also apply to assignments and renewals of leases.

**2.05 Subdividing and Consolidating.** No Lot shall be consolidated or further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ACC; provided, however, that when Declarant is the Owner thereof, Declarant may consolidate and/or further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the ACC.

**2.06 Hazardous Activities.** No activities may be conducted on or within the Property and no Improvements constructed on any portion of the Property which, in the opinion of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Property unless discharged in conjunction with an event approved in advance by the Board and no open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

**2.07 Mining and Drilling.** The surface of the Property may not be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Property by the Declarant.

**2.08 Water Bodies.** By acceptance of a deed to a home or a Lot, each Owner acknowledges that the water levels of any ponds or other water bodies within the Property may vary. There is no guarantee by the Declarant or the Association that water levels will be constant or aesthetically pleasing at any particular time. In fact, water levels may be non-existent from time to time.

**2.09 Noise.** No exterior speakers (except for outdoor stereo speakers), horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement or motorized vehicle on any Lot, the Association may (but shall not be obligated to) enter any such Lot and Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

**2.10 Animals - Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, goats, exotic snakes or lizards, ferrets, monkeys, chickens or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner may keep more than four (4) cats and dogs, in the aggregate, unless otherwise approved by the Board. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner's residence, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by Applicable Law. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property.

**2.11 Rubbish and Debris.** As determined by the Board, no rubbish or debris of any kind may be placed or permitted to accumulate on or within the Property, and no odors will be permitted to arise therefrom so as to render all or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or Residents. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

**2.12 Trash Containers.** Trash containers and recycling bins may be placed at the edge of the Owner's Lot for trash collection on the night before or the day of the trash collection, and must be returned to their storage location promptly after collection. Trash containers and recycling bins must be stored in one of the following locations:

- (a) inside the garage of the single-family residence constructed on the Lot; or
- (b) behind the single-family residence or fence constructed on the Lot or in such a manner that the trash container and recycling bin is not visible from any street, alley, adjacent Lot, or any pond.

The Board shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

**2.13 Maintenance.** The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Board, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this Section 2.13 has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner, as determined by the Board, in its sole discretion:

- (i) Prompt removal of all litter, trash, refuse, and wastes.
- (ii) Lawn mowing.
- (iii) Tree and shrub pruning.
- (iv) Watering.
- (v) Keeping exterior lighting and mechanical facilities in working order.
- (vi) Keeping lawn and garden areas alive, free of weeds, and attractive, and using natural grasses only except that artificial grass may be installed in the rear yard in locations not visible from any street.
- (vii) Keeping planting beds free of turf grass.
- (viii) Keeping sidewalks and driveways in good repair.
- (ix) Complying with Applicable Law.
- (x) Repainting of Improvements.
- (xi) Repair of exterior damage, and wear and tear to Improvements.

**2.14 Street Landscape Area-Owner's Obligation to Maintain Landscaping.** Each Owner will be responsible, at such Owner's sole cost and expense, for maintaining, mowing, replacing, pruning, and irrigating the landscaping between the boundary of such Owner's Lot and the curb of any adjacent right-of-way, street or alley (the "ST Landscape Area") unless the responsibility for maintaining the ST Landscape Area is performed by the Association.

**2.15 Antennas.** Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, shall be erected, maintained or placed on a Lot without the prior written approval of the ACC; provided, however, that:

(i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television or radio broadcast signals;

(collectively, (i) through (iii) are referred to herein as the "**Permitted Antennas**") will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the ACC, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property.

**2.16 Location of Permitted Antennas.** A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, or any other portion of the Property. A Permitted Antenna shall be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Property, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ACC are as follows:

(i) Attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

(ii) Attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The ACC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

**Satellite dishes one meter or less in diameter, e.g., DirecTV or Dish satellite dishes, are permitted, HOWEVER, you are required to comply with the rules regarding**

**installation and placement. These Rules may be modified by the ACC from time to time. Please contact the ACC for the current rules regarding installation and placement.**

**2.17 Signs.** No sign of any kind may be displayed to the public view on any Lot without the prior written approval of the ACC. Notwithstanding the foregoing, the following signs shall be permitted unless otherwise prohibited by Applicable Law:

(i) signs which are permitted pursuant to the Design Guidelines or the Rules;

(ii) signs which are part of Declarant's or Homebuilder's overall marketing, sale, or construction plans or activities for the Property;

(iii) one (1) temporary "For Sale" or "For Lease" sign placed on the Lot. The sign will be limited to a maximum face area of six (6) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade at the spot where the sign is located may not exceed four (4) feet. The sign must be removed within two (2) business days following the sale or lease of the Lot;

(iv) an aggregate of four (4) political signs may be erected provided the signs: (a) are erected no earlier than the 90<sup>th</sup> day before the date of the election to which the sign relates; (b) are removed no later than the 10<sup>th</sup> day after the date of the election to which the sign relates; (c) are ground-mounted; and are limited to a maximum face area of six (6) square feet on each visible side. Only one sign may be erected for each candidate or ballot item. In addition, political signs shall be subject to all applicable restrictions set forth in the Texas Property Code;

(v) permits as may be required by legal proceedings or a governmental entity;

(vi) a "no soliciting" and "security warning" sign near or on the front door to their residence, provided, that the sign may not exceed twenty-five (25) square inches; and

(vii) signs displaying a school where one or more of an Owner's children attend school, provided that the signs are ground-mounted and are limited to a maximum face area of six (6) square feet on each visible side.

**2.18 Flags - Approval Requirements.** An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any



branch of the United States Military, flags with official insignia of a college or university, or one (1) holiday flag ("**Permitted Flag**") and permitted to install a flagpole affixed to the front of a residence near the principal entry or affixed to the rear of a residence ("**Permitted Flagpole**"). Only one (1) permitted Flagpole is allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the ACC. Approval by the ACC is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot ("**Freestanding Flagpole**"). To obtain ACC approval of any Freestanding Flagpole, the Owner shall provide the ACC with the following information: (a) the location of the Freestanding Flagpole to be installed on the Lot; (b) the type of Freestanding Flagpole to be installed; (c) the dimensions of the Freestanding Flagpole; and (d) the proposed materials of the Freestanding Flagpole (the "**Flagpole Application**"). A Flagpole Application may only be submitted by an Owner. The Flagpole Application shall be submitted in accordance with the provisions of *Article 7* of this Declaration.

**2.19 Flags – Installation and Display.** Unless otherwise approved in advance and in writing by the ACC, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

- (i) No more than one (1) Freestanding Flagpole OR Permitted Flagpole is permitted per Lot, on which only Permitted Flags may be displayed;
- (ii) Any Permitted Flagpole affixed to a residence must be no longer than five feet (5') in length, and any Freestanding Flagpole must be no more than twenty feet (20') in height
- (iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3'x5');
- (iv) With the exception of flags displayed on Common Area or any Lot which is being used for marketing purposes by a Homebuilder, the flag of the United States of America must be displayed in accordance with all applicable US Code sections, and the flag of the State of Texas must be displayed in accordance with applicable Texas Government Code sections;
- (v) The display of a Permitted Flag, or the location and construction of a Permitted Flagpole or Freestanding Flagpole must comply with all Applicable Law;
- (vi) Each Permitted Flagpole and Freestanding Flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction thereof and harmonious with the residence;

(vii) Permitted Flag, Permitted Flagpole and Freestanding Flagpole must be maintained in good condition and any deteriorated Permitted Flag or deteriorated or structurally unsafe Permitted Flagpole or Freestanding Flagpole must be repaired, replaced or removed;

(viii) A Permitted Flag may be illuminated by no more than two (2) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring Lot; and

(ix) Any external halyard of a Permitted Flagpole or Freestanding Flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the Permitted Flagpole or Freestanding Flagpole.

The requirements of this *Section 2.19* shall not apply to any flag or flagpole erected by the Declarant.

**2.20 Tanks.** The ACC must approve any tank used or proposed in connection with a residence, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No elevated tanks of any kind may be erected, placed or permitted on any Lot without the advance written approval of the ACC. All permitted tanks must be screened from view in accordance with a screening plan approved in advance by the ACC. This provision will not apply to a tank used to operate a standard residential gas grill.

**2.21 Temporary Structures.** No tent, shack, yard barn, or other temporary building, Improvement, or structure shall be placed upon the Property without the prior written approval of the ACC; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for Homebuilders, architects, and foremen during actual construction may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding the foregoing, a tent used for camping may be placed in the rear yard of a Lot for a period of less than ten (10) days without the prior written approval of the ACC.

**2.22 Unsightly Articles; Vehicles.** No article deemed to be unsightly by the Board will be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, trucks other than pickups, boats, tractors, motor homes, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden and lawn maintenance equipment must be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view, and no lumber, grass, plant waste, shrub or

tree clippings, metals, bulk materials, scrap, refuse or trash may be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.

Parking and storage of vehicles including, without limitation, commercial vehicles, recreational vehicles, racing vehicles, motorcycles, motor scooters, golf carts, boats and other watercraft, trailers, inoperable vehicles, and equipment related to vehicles, in places other than in enclosed garages is prohibited; provided that construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a residence.

Mobile homes are prohibited. Notwithstanding the foregoing, sales trailers or other temporary structures installed by the Declarant or expressly approved by the ACC and the City of Heath shall be permitted.

**2.23 Basketball Goals; Permanent and Portable.** Permanent basketball goals are permitted between the street right-of-way and the front of the residence on a Lot provided the basketball goal is located at least twenty-five feet (25') from the street curb. The basketball goal backboard must be perpendicular to the street and mounted on a metal pole permanently installed in the ground. Portable basketball goals are permitted in the same locations as the permanent basketball goals, but must be stored in the rear yard of the Lot, inside a garage, or otherwise screened from view from sundown to sunrise. Basketball goals must be properly maintained and painted, with the net in good repair. All basketball goals, whether permanent or portable, must be approved by the ACC prior to being placed on any Lot.

**2.24 Compliance with Restrictions.** Each Owner, his or her family, Residents of a Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of the Restrictions and may result in a fine against the Owner in accordance with *Section 6.11* of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board on behalf of the Association, the ACC, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this

Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner shall indemnify and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 2.24* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

**2.25 Liability of Owners for Damage to Common Area.** No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to: (i) the Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any Resident of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage shall be an Individual Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided in *Section 6.09* of this Declaration.

**2.26 No Warranty of Enforceability.** Declarant makes no warranty or representation as to the present or future validity or enforceability of the Restrictions. Any Owner acquiring a Lot in reliance on one or more of the Restrictions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

**2.27 Party Wall Fences.** A fence or wall, including a retaining wall, located on or near the dividing line between two (2) Lots and intended to benefit both Lots constitutes a "Party Wall" and, to the extent not inconsistent with the provisions of this *Section 2.27*, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

(a) **Encroachments & Easement.** If the Party Wall is on one Lot due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this *Section 2.27*. Each Lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

(b) Right to Repair. If the Party Wall is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall.

(c) Maintenance Costs. The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. The right of an Owner to require contribution from another Owner under this Section 2.27 is appurtenant to the Lot and passes to the Owner's successors in title.

(d) Alterations. The Owner of a Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining Lot. The Party Wall will always remain in the same location as when erected unless otherwise approved by the Owner of each Lot sharing the Party Wall and the ACC.

**2.28 No Tennis or Recreational Courts; Playscapes.** No tennis, recreational or sport courts, and no playscapes or similar recreational facilities, shall be constructed on any Lot without the express prior approval of the ACC. The ACC may prohibit the installation of a tennis, recreational or sport court, or a playscape or similar recreational facility on any Lot in its sole discretion.

**2.29 Exterior Lighting and Decorations .** All exterior lighting must be approved in advance by the ACC. Exterior lighting shall be limited to white or color corrected low beam intensity lamps and will be kept to a reasonable maximum number of lamps. Sodium, mercury vapor, or bare HID yard lights are not allowed. Such illumination shall be designed and installed so as to light only the principal residential structure, landscaping, driveway areas and walkways upon a Lot. Indirect sources and horizontal cut-off fixtures are recommended to reduce glare and provide general ambient light. Soffit or tree lights must be shielded or directed towards vegetation so as to eliminate glare and source visibility. Exterior lights whose direct source is visible from a street or neighboring property, which are aimed towards or otherwise directly affecting any neighboring property, or which produce excessive glare to pedestrian or vehicular traffic are prohibited. Any permitted ground-level light fixtures shall be depressed or screened from public view in a manner approved by the ACC. No outdoor lighting shall be directed towards the Common Area. Exterior lighting plans and specifications shall be submitted along with, but in a separate package from, the construction plans and specifications submitted to the ACC for approval. No decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be

placed on the residence or on the front yard or on any other portion of a Lot which is visible from any street, unless such specific items have been approved in writing by the ACC. Lights or decorations may be erected on the exterior of the principal residential structure in commemoration or celebration of publicly observed holidays, provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners. All lights and decorations must be temporary fixtures and must be removed within thirty (30) days after the applicable holiday.

**2.30 Clotheslines; Window Air Conditioners.** No clotheslines and no outdoor clothes drying or hanging which is visible from any street shall be permitted within the Property. Window air conditioners are prohibited.

**2.31 Dumping.** No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal scrap, garbage or other waste, except that such material may be kept in areas of the Property designated for this purpose by Declarant (in connection with its construction) or by the Board, provided that these materials are kept in sanitary containers in a clean and sanitary condition. Owners shall place these containers for collection only in the designated areas and only on the day these refuse materials are to be collected. Empty containers shall be removed promptly after collection.

**2.32 Declarant and Homebuilder Exemption.** The provisions of this Article are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Property; the restrictions are not intended to prohibit the Declarant or Homebuilders from performing such work as may be necessary for the development of the Property or the construction of Improvements thereon. The restrictions in this Article shall not be binding on Declarant or Homebuilders in the performance of any work required in order to complete construction of the Property, or any portion thereof.

### ARTICLE 3 CONSTRUCTION RESTRICTIONS

**3.01 Supplemental Declarations.** All construction restrictions and design guidelines pertaining to a particular Phase within the Property are set forth in the Supplemental Declaration applicable to such Phase.

### ARTICLE 4 THE ASSOCIATION

**4.01 Organization.** The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Certificate nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**4.02 Neighborhoods.** Declarant reserves the right to group Lots into one or more "Neighborhoods" by written instrument (which designation will be made in the sole and absolute discretion of Declarant) to facilitate voting on certain matters and to promote a sense of community among Owners within a Neighborhood. Presently, there are two Neighborhoods, with the first Neighborhood consisting of Phases Four A and Four B, and the second Neighborhood consisting of Phase Five.

**4.03 Membership.**

(a) **Mandatory Membership.** Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

**If you acquire a Lot you automatically become a member of the Association.  
Membership is Mandatory!**

(b) **Easement of Enjoyment - Common Area.** Every Member will have a right and easement of enjoyment in and to all of the Common Area and an access easement by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot, subject to the following restrictions and reservations:

(i) The right of the Declarant to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by the Declarant, in the Declarant's sole and absolute discretion;

(ii) The right of the Declarant, during the Development Period, and the Board thereafter, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;

(iii) The right of the Declarant, during the Development Period, and the Board thereafter, to grant easements or licenses over and across the Common Area;

(iv) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;

(v) The right of the Declarant, during the Development Period, and the Board thereafter, to promulgate Rules regarding the use of the Common Area and any Improvements thereon; and

(vi) The right of the Association to contract for services with any third parties on such terms as the Association may determine.

**4.04 Governance.** The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in this Declaration to the contrary, Declarant will have the sole right to appoint and remove all members of the Board until the expiration of the Development Period, except as otherwise provided by Applicable Law. Promptly after the expiration of the Development Period, or sooner as determined by Declarant, the Board will call a meeting of Members of the Association for the purpose of electing one-third of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until twelve (12) months after the expiration or termination of the Development Period, at which time such rights shall automatically assign to the Members of the Association.**

**4.05 Voting; Voting Rights.** The right to cast votes and the number of votes which may be cast for election of members to the Board (except as provided by *Section 4.04*) and on all other matters to be voted on by the Members will be calculated as set forth below.

(i) The Owner of each Lot will have one (1) vote for each Lot so owned. In the event that two or more Lots have been consolidated into a single Lot, the Owner of such consolidated Lot shall have one (1) vote for each Lot that comprised the consolidated Lot.

(ii) Notwithstanding *Section 4.05(i)* above, Declarant shall have twelve (12) votes for each Lot owned by Declarant until the expiration or termination of the Development Period.

(iii) When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot, and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this *Section 4.05*.



**4.06 Powers.** The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property (including the operation, maintenance and preservation thereof) or the Association. Any Rules, and any modifications to existing Rules, or the Bylaws proposed by the Board must be approved in advance and in writing by the Declarant until expiration or termination of the Development Period.

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect assessments, as provided in *Article 6* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours advance notice), without being liable to any Owner or Resident, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 6* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take

all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing these Restrictions unless a judicial order authorizing such action has been obtained in advance by the Association, or unless the written consent of the Owner(s) of the affected Lot(s) has been obtained in advance. **EACH SUCH OWNER AND RESIDENT WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.06(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and

occupancy restrictions imposed by the Restrictions or by Applicable Law. In addition, until expiration or termination of the Development Period, any grant or conveyance under this *Section 4.06(g)* must be approved in advance and in writing by the Declarant.

(h) Manager. To retain and pay for the services of a person or firm (the "Manager"), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Manager. Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon thirty (30) days prior written notice to the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY ANY MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for any portion of the Property, Common Area, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, and ponds.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Restrictions or as determined by the Board.

(k) Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board and the Declarant until expiration or termination of the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Association hereunder must be approved in advance and in writing by the Declarant.

(n) Allocation of Votes. To determine votes when permitted pursuant to Section 4.05 above.

(o) Membership Privileges. To establish Rules governing and limiting the use of the Common Area and any Improvements thereon.

**4.07 Acceptance of Common Area.** The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, or the Property and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Such property will be accepted by the Association and thereafter will be maintained as Common Area, as applicable, by the Association for the benefit of the Property and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association, as determined in the sole and absolute discretion of the Declarant.

**4.08 Indemnification.** To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (i) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

**4.09 Insurance.** The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability or otherwise.

**4.10 Community Systems.** The Association is specifically authorized, but not obligated, to provide, or to enter into contracts to provide Community Systems. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in Community Systems and services will occur from time to time. Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

**4.11 Declarant's Right to Contribute to Revenues of the Association.** Declarant shall have the right, but not the obligation, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to Declarant, at the discretion of Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made until the date of its repayment, at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

**4.12 Protection of Declarant's Interests.** Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

**4.13 Administration of Common Area.** The administration of the Common Area by the Association shall be in accordance with the provisions of Applicable Law and the Restrictions, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for

example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

**4.14 Notices and Disclaimers as to Security Systems.** IN THE EVENT THAT THE DECLARANT, A HOMEBUILDER, THE ASSOCIATION OR ANY AFFILIATES OF THE FOREGOING PROVIDE OR INSTALL ANY SECURITY SYSTEM OR SERVICES TO THE PROPERTY, NEITHER THE DECLARANT, A HOMEBUILDER, NOR THE ASSOCIATION, OR THEIR AFFILIATES, SUCCESSORS OR ASSIGNS GUARANTEE OR WARRANTY, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, NOTIFY AUTHORITIES OF FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR RESIDENT OF PROPERTY RECEIVING SECURITY SERVICES THROUGH THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT NEITHER THE DECLARANT, A HOMEBUILDER, NOR THE ASSOCIATION, OR ANY OR THEIR SUCCESSORS OR ASSIGNS ARE INSURERS OF THE OWNER OR RESIDENT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE LOT AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the part of a security service provider to perform any of its obligations with respect to security services and, therefore, every Owner or Resident of property receiving security services through the Community Systems agrees that neither the Declarant, a Homebuilder, nor the Association, or their affiliates, successors or assigns assumes liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of: (a) any failure of the Owner's security system; (b) any defective or damaged equipment, device, line or circuit; (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees; or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every Owner and Resident obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of the Declarant, a Homebuilder, the Association, or their affiliates, successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding Two Hundred Fifty U.S. Dollars (\$250.00), which limitation applies irrespective of the cause or origin of the loss or damage and notwithstanding that the

loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Declarant, a Homebuilder, or the Association, or their successors or assigns. Further, in no event will Declarant, a Homebuilder, the Association, or their successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

## ARTICLE 5 INSURANCE

**5.01 Insurance.** Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot. The Association will not be required to maintain insurance on the Improvements constructed upon any Lot. The Association may, however, obtain such insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

**5.02 Restoration.** In the event of any fire or other casualty, unless otherwise approved by the ACC, the Owner will promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials substantially similar to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute same to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and such Owner will be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) will be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot will be secured by the liens reserved in the Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot. **EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION**

AND ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 5.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

5.03 Mechanic's and Materialmen's Lien. Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this Article 5, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, or replacement of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration or replacement exceeds any insurance proceeds allocable to such repair, restoration or replacement and delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration or replacement, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

## ARTICLE 6 COVENANT FOR ASSESSMENTS

### 6.01 Assessments.

(a) Established by Board. Assessments established by the Board pursuant to the provisions of this Article 6 will be levied against each Lot in amounts determined pursuant to Section 6.06 below. The total amount of Assessments will be determined by the Board pursuant to Section 6.03, 6.04, 6.05, and/or 6.06.

(b) Personal Obligation; Lien. The entire amount of each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article. For the purposes of this Article 6, an Owner shall include any Homebuilder of a Lot during the period in which the Homebuilder owns the Lot.

(c) Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by



Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years. Declarant presently intends to provide a subsidy to the Association in the form of payment equal to twenty-five percent (25%) of the total amount of the Assessments attributable to the Lots which Declarant owns at the time such Assessment is levied.

**6.02 Operations Fund.** The Board will establish an operations fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Declaration. The funds of the Association may be used for any purpose permitted by the Restrictions and Applicable Law.

**6.03 Regular Annual Assessments.** Prior to the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under the Restrictions, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Restrictions, and will estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, and will give due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such regular Assessments will be due and payable to the Association on a quarterly basis on or before the first day of each calendar quarter within the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion.

**6.04 Special Assessments.** In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any special Assessments will be at the reasonable discretion of the Board. In addition to the special Assessments authorized above, the Association may, in any fiscal year, levy a special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area.

**6.05 Individual Assessments.** In addition to any other Assessments, the Board may levy an Individual Assessment against an Owner and the Owner's Lot. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner's Lot into compliance with the Declaration; fines for violations of the Restrictions; transfer-related fees

and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Lot; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to the benefit received.

**6.06 Amount of Assessment.**

(a) Assessments to be Levied. The Board shall levy Assessments against each "Assessment Unit" (as defined in *Section 6.06(b)* below). Unless otherwise provided in this Declaration, Assessments levied pursuant to *Section 6.03* and *Section 6.04* shall be levied uniformly against each Assessment Unit allocated to a Lot.

(b) Assessment Unit. Each Lot shall constitute one "Assessment Unit" unless otherwise provided in *Section 6.06(c)* and *(d)*. Notwithstanding the foregoing, in the event that two or more Lots have been consolidated into a single Lot, the "Assessment Units" for such consolidated Lot shall be multiplied by the number of Lots that comprised the consolidated Lot.

(c) Assessment Exemption. Notwithstanding anything in this Declaration to the contrary, no Assessments shall be levied upon Lots owned by Declarant.

(d) Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Property or any Lot from any Assessments levied or charged pursuant to this *Article 6*; or (ii) delay the levy of Assessments against any un-platted or unimproved of the Property or any Lot; or (iii) reduce the levy of Assessments against any un-platted or unimproved portion of the Property or any Lot. Declarant or the Board may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments. In the event Declarant elects to delay or reduce Assessments pursuant to this Section, the duration of the delay or the amount of the reduction will be set forth in a written instrument signed by Declarant. Declarant may terminate, extend or modify any delay or reduction.

**6.07 Late Charges.** If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot;

provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

**6.08 Owner's Personal Obligation; Interest.** Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one half percent (1 1/2%) per month), together with all costs and expenses of collection, including reasonable attorney's fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner.

**6.09 Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this Article is, together with late charges as provided in *Section 6.07* and interest as provided in *Section 6.08* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 6.01(b)* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens; (ii) all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question and (iii) home equity loans or home equity lines of credit which are secured by a second mortgage lien or second deed of trust lien of record; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an officer, agent, or attorney of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the officers, agents, or attorneys of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage,

convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this Section 6.09, the Association will upon the request of the Owner execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or Resident to the utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Resident of the Owner's Lot can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party; provided, however, that no transfer fee will be due upon the transfer of a Lot from Declarant to a third party.

**Yes, the Association can foreclose on your Lot!**

**If you fail to pay assessments to the Association, you may lose title to your Lot, and any Improvements thereon, if the Association forecloses its assessment lien.**

**6.10 Exempt Property.** The following area within the Property will be exempt from the Assessments provided for in this Article:

- (a) All areas dedicated and accepted by a public authority;
- (b) The Common Area; and
- (c) Any portion of the Property owned by Declarant.

**6.11 Fines and Damages Assessment.**

(a) **Board Assessment.** The Board may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, a Resident, or the Owner or Residents guests, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 6.11* will be considered an Individual Assessment pursuant to this Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities located by the Owner, Resident, or their guests, agents, or invitees. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Rules and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines.

(b) **Procedure.** The procedure for assessment of fines and damage charges will be as follows:

- (i) the Association, acting through an officer, Board member or Manager, must give the Owner notice of the fine or damage charge not later than thirty (30) days after the assessment of the fine or damage charge by the Board;
- (ii) the notice of the fine or damage charge must describe the violation or damage;
- (iii) the notice of the fine or damage charge must state the amount of the fine or damage charge;

(iv) the notice of a fine or damage charge must state that the Owner will have thirty (30) days from the date of the notice to request a hearing before the Board to contest the fine or damage charge; and

(v) the notice of a fine must allow the Owner a reasonable time, by a specified date, to cure the violation (if the violation is capable of being remedied) and avoid the fine unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six (6) months.

(c) Due Date. Fine and/or damage charges are due immediately after the expiration of the thirty (30) day period for requesting a hearing. If a hearing is requested, such fines or damage charges will be due immediately after the Board's decision at such hearing, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.

(d) Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 6.08* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 6.01(b)* of this Declaration. Unless otherwise provided in this *Section 6.11*, the fine and/or damage charge will be considered an Assessment for the purpose of this Article and will be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 6*.

## ARTICLE 7 ARCHITECTURAL CONTROL COMMITTEE

Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in *Section 7.02(a)* below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association. Notwithstanding any provision in this Declaration to the contrary, Declarant may appoint a single person to exercise the rights of the ACC.

**7.01 Construction of Improvements.** No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC.

### **7.02 Architectural Control Committee.**

(a) Composition. The ACC will be composed of not more than three (3) persons (who need not be Members or Owners) appointed as provided below, who will review Improvements proposed to be made by any Owner other than Declarant.

Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant may assign its right to appoint all members of the ACC to the Association by written instrument, and thereafter, the Board will have the right to appoint and remove (with or without cause) all members of the ACC. Any assignment by Declarant of the right to appoint and remove all members of the ACC may be withdrawn until the expiration of twelve (12) months after the expiration of the Development Period. If Declarant withdraws its assignment of the right to appoint and remove all members of the ACC, then on the date of such withdrawal, Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. Declarant's right to appoint all members of the ACC will automatically be assigned to the Association upon the expiration of twelve (12) months after the expiration of the Development Period. Declarant, at its option, may create and assign specific duties and responsibilities to one or more sub-committees consisting of members and/or nonmembers of the ACC. In the event responsibilities and duties are assigned to a sub-committee, those responsibilities and duties will no longer be discharged by the ACC unless the sub-committee exercising such duties and responsibilities is dissolved by Declarant. The right to create, dissolve, and appoint members of such sub-committees will reside exclusively with Declarant until such time as Declarant has assigned its right to appoint members of the ACC to the Association. The ACC will have the right to employ consultants and advisors as it deems necessary or appropriate.

(b) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with *Section 7.02(c)* to the ACC at the offices of Declarant, at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications thereof have been approved by a Majority of the members of the ACC and signed by at least one member of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision

or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

Notwithstanding any provision to the contrary in the Declaration, the ACC may issue an approval to Homebuilders for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval of Improvements set forth in this Declaration.

(c) Design Guidelines. The initial Design Guidelines for each Phase are set forth in the respective Supplemental Declarations for such Phases. During the Development Period, Declarant will have the power from time to time, to amend, modify, or supplement the Design Guidelines. Upon expiration or termination of the Development Period, the ACC, or any sub-committee thereof created pursuant to *Section 7.02(a)*, will have the power from time to time, to amend, modify, or supplement the Design Guidelines; provided, however, that any amendment to the Design Guidelines made by a sub-committee will only apply to the Improvements under the jurisdiction of such sub-committee, and during the Development Period, any such amendment, modification or supplement must be approved in advance and in writing by the Declarant. In the event of any conflict between the terms and provisions of the Design Guidelines for a particular Phase and the terms and provisions of this Declaration, the terms and provisions of the Design Guidelines will control for that particular Phase. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(d) Actions of the ACC. The ACC may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the ACC, except the granting of variances. In the absence of such designation, the vote of a Majority of all of the members of the ACC taken at a duly constituted meeting will constitute an act of the ACC.



(e) Failure to Act. In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails either to approve or reject such plans and specifications for a period of ten (10) business days following such submission, rejection of such plans and specifications by the ACC will be presumed. In furtherance, and not in limitation, of the foregoing, any failure of the ACC to act upon a request for a variance will not be deemed a consent to such variance, and the ACC's written approval of all requests for variances will be expressly required.

(f) Variances. The ACC may grant variances from compliance with any of the provisions of the Design Guidelines or this Declaration, when, in the opinion of the ACC, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and must be approved by a Majority of the members of the ACC and signed by at least one member of the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the Design Guidelines.

(g) Duration of Approval. Unless otherwise directed by the ACC, the approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred and eighty (180) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and eighty (180) day period and diligently prosecuted to completion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this *Section 7.02(g)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(h) No Waiver of Future Approvals. The approval of the ACC to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the ACC.

(i) (i) Non-Liability of Committee Members. NEITHER DECLARANT, THE ACC, NOR ANY PARTNER, EMPLOYEE, DIRECTOR, OFFICER, COMMITTEE MEMBER, OR AGENT WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ACC'S DUTIES UNDER THIS DECLARATION.

## ARTICLE 8 MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this Article apply to the Declaration and the Bylaws of the Association.

**8.01 Notice of Action.** An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates will thereby become an "**Eligible Mortgage Holder**"). The Association shall use good-faith efforts to deliver timely written notice to the Eligible Mortgage Holders of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or Resident which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Notwithstanding the foregoing, in no event will the Association incur any liability to any Eligible Mortgage Holder or any other third party for any failure of the Association to timely deliver notices under this *Section 8.01*.

**8.02 Examination of Books.** The Association will permit Mortgagees to examine the books and records of the Association during normal business hours. In addition, the Association will have the power and authority to impose an hourly fee for the examination of the books and records of the Association. Funds collected from such charges will be held by the Association and used to defray the administrative expenses incurred by the Association in providing the services hereunder and for other Association expenses.

**8.03 Taxes, Assessments and Charges.** All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Lots and not to any other portion of the Property.

## ARTICLE 9 GENERAL PROVISIONS

**9.01 Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is Recorded, and continuing through and including January 1, 2071, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. Notwithstanding any provision in this Section 9.01 to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of the "Rule Against Perpetuities" or any other Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire (twenty one) 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**9.02 Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of Mortgages or deeds of trust on the respective Lot.

**9.03 Amendment.** This Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast by members of the Association. No amendment will be effective without the written consent of Declarant, its successors or assigns, during the

Development Period. Specifically, and not by way of limitation, Declarant may unilaterally amend this Declaration: (i) to bring any provision into compliance with Applicable Law; (ii) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (iv) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

**9.04 Roadway and Utility Easements.** Declarant reserves the right to create, locate, relocate, construct, erect, and maintain or cause to be created, located, relocated, constructed, erected, and maintained in and on any portion of the Property then owned by Declarant or maintained by the Association, or areas conveyed to the Association, or areas reserved or held as Common Area, roadways, sewer lines, water lines, electrical lines and conduits, and other pipelines, conduits, wires, and any public utility function beneath or above the surface of the ground with the right of access to the same at any time for the purposes of repair and maintenance.

**9.05 Enforcement.** The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, the Restrictions. Failure to enforce any right, provision, covenant, or condition set forth in the Restrictions will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

**9.06 Prevailing Authority.** The terms and provisions of this Declaration are subordinate to Applicable Law. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

**9.07 Severability.** If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

**9.08 Conflicts.** If there is any conflict between the provisions of this Declaration, the Certificate, the Bylaws, or any Rules adopted pursuant to the terms of such documents, the provisions of this Declaration, the Certificate, the Bylaws, and the Rules, in such order, will govern.

**9.09 Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

**9.10 Acceptance by Grantees.** Each grantee of Declarant of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

**9.11 Damage and Destruction.**

(a) Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 9.11(a)*, means repairing or restoring the Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Repair Obligations. Any damage to or destruction of the Common Area will be repaired unless a Majority of the Board decides within ninety (90) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

(d) Special Assessment. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a special Assessment, as provided in *Article 6*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) **Insurances Proceeds Payable to Owners.** In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of Mortgages or deeds of trust on their Lots.

**9.12 No Partition.** Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part will be permitted, nor will any person acquiring any interest in the Property or any part seek any such judicial partition unless the Property in question has been removed from the provisions of this Declaration pursuant to *Section 11.04* below. This *Section 9.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

**9.13 Notices.** Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

**9.14 View Impairment.** Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space or Common Area within the Property will be preserved without impairment. Neither the Declarant, the ACC, and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

**9.15 Privacy.** Each Owner and Resident of a Lot, and their respective guests and invitees, shall be respectful of the reasonable expectations privacy of the other Owners and Residents. The Association and the Declarant shall have the right to enforce this covenant.

**9.16 Safety and Security.** Each Owner and Resident of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by

reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

## ARTICLE 10 EASEMENTS

**10.01 Right of Ingress and Egress.** Declarant, its agents, employees and designees will have a right of ingress and egress over and the right of access to the Common Area to the extent necessary to use the Common Area and the right to such other temporary uses of the Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with the construction and development of the Property. The Property shall be subject to a perpetual non-exclusive easement for the installation and maintenance, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly maintain and furnish the Community Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the right, but not the obligation, to install and provide the Community Systems and to provide the services available through the Community Systems to any and all Lots within the Property. Neither the Association nor any Owner shall have any interest therein. Any or all of such services may be provided either directly through the Association and paid for as part of the Assessments or directly to Declarant, any affiliate of Declarant, or a third party, by the Owner who receives the services. The Community Systems shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any Person. The rights of Declarant with respect to the Community Systems installed by Declarant and the services provided through such Community Systems are exclusive, and no other Person may provide such services through the Community Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

**10.02 Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications,

limitations, reservations and grants for the purpose of most efficiently and economically developing the Property.

**10.03 Utility Easements.** Declarant hereby reserves unto itself and Declarant's successors and assigns a perpetual non-exclusive easement over and across the Property for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Property and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Property and any other property owned by Declarant; and (iii) the installation, operation and maintenance of, roadways, gates, walkways, pathways and trails, drainage systems, street lights and signage to serve the Property and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (i) through (iii) of this *Section 10.03*. The exercise of the easement reserved herein will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

**10.04 Subdivision Entry and Fencing Easement.** Declarant reserves for itself and the Association, an easement over and across the Property for the installation, maintenance, repair or replacement of certain subdivision entry facilities and fencing which serves the Property. Declarant will have the right, from time to time, to Record a written notice which identifies the subdivision entry facilities and fencing to which the easement reserved hereunder applies. Declarant may designate all or any portion of the subdivision entry facilities and/or fencing as Common Area by Recorded written notice. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

**10.05 Landscape and Monument Sign Easement.** Declarant hereby reserves for itself and the Association, an easement over and across the Property for the installation, maintenance, repair or replacement of one or more monument signs which serve the Property. Declarant will have the right, from time to time, to Record a written notice, which identifies those portions of the Property to which the easement reserved hereunder applies. Declarant may designate all or any portion of the easement areas reserved hereunder as Common Area. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Lot or residence or Improvement constructed thereon.

**10.06 Declarant as Attorney in Fact.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other third party by acceptance of the benefits of a mortgage,



deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party. The aforesaid power shall be vested in Declarant, its successors and assigns, for a period of twenty-five (25) years from the date the first Lot is conveyed to an individual purchaser, or until the expiration or termination of the Development Period, whichever occurs first. Declarant hereby reserves for itself, its successors and assigns the right to execute on behalf of each Owner, Mortgagee, and third party claiming a legal or equitable interest in the Common Area, any such agreements, documents, amendments or supplements to the Restrictions which may be required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

## **ARTICLE 11 DEVELOPMENT RIGHTS**

**11.01 Development by Declarant.** It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to create and/or designate Lots, Common Areas, and to subdivide with respect to any of the Property pursuant to the terms of this *Section 11.01*, subject to any limitations imposed on portions of the Property by any applicable Plat. These rights may be exercised with respect to any portions of the Property. As each area is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area.

**11.02 Special Declarant Rights.** Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the

activities enumerated in this *Section 11.02* until two (2) years after expiration or termination of the Development Period.

**11.03 Addition of Land.** Declarant may, at any time and from time to time, add additional lands to the Property. Upon the filing of a notice of addition of land, such land will be considered part of the Property for purposes of this Declaration, and such added lands will be considered part of the Property subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Property, Declarant will be required only to Record a notice of addition of land containing the following provisions:

- (a) A reference to this Declaration, which reference will state the document number or volume and initial page number of the Official Public Records of Rockwall County wherein this Declaration is Recorded;
- (b) A statement that such land will be considered Property for purposes of this Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and
- (c) A legal description of the added land.

**11.04 Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal and renewal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

- (a) A reference to this Declaration, which reference will state the document number or volume and initial page number of the Official Public Records of Rockwall County wherein this Declaration is recorded;
- (b) A statement that the provisions of this Declaration will no longer apply to the withdrawn land; and
- (c) A legal description of the withdrawn land.

**11.05 Assignment of Declarant's Rights.** Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any person or

entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.


*[SIGNATURE PAGE FOLLOWS]*

EXECUTED to be effective on the date this instrument is Recorded.

**DECLARANT:**

TR HEATH PARTNERS, LTD.,  
a Texas limited partnership

By: TFC Heath GP, Inc.,  
a Texas corporation, its general partner

By:   
W. T. Field, Executive Vice President

THE STATE OF TEXAS

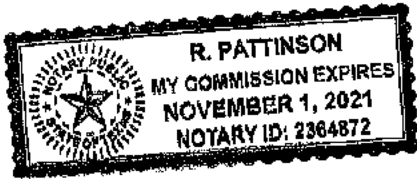
,


,

COUNTY OF DALLAS

,

This instrument was acknowledged before me on the 1<sup>st</sup> day of March, 2021, by W. T. Field, Executive Vice President of TFC Heath GP, Inc., the general partner of TR Heath Partners, Ltd., a Texas limited partnership, on behalf of said partnership.



  
Notary Public in and for the State of Texas

**CONSENT OF MORTGAGEE**

The undersigned, being the sole owner and holder of the lien created by a Deed of Trust and Security Agreement recorded on June 6, 2019 as Document No. 201900000365 in the Official Public Records of Rockwall County, Texas (the "Lien"), securing a note of even date therewith, executes this Declaration solely for the purposes of (i) evidencing its consent to this Declaration, and (ii) subordinating the Lien to this Declaration, both on the condition that the Lien shall remain superior to the Assessment Lien in all events.

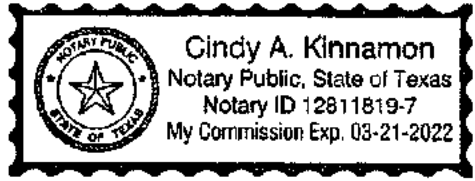
**INWOOD NATIONAL BANK,**  
a national banking association

By: [Signature]  
Printed Name: Rick Cannon  
Title: MARKET PRESIDENT

STATE OF TEXAS                   §  
   §  
COUNTY OF DALLAS           §

This instrument was acknowledged before me on this 1<sup>st</sup> day of March, 2021, by \_\_\_\_\_ of Inwood National Bank, a national banking association, on behalf of said bank.

[seal] [Signature]  
Notary Public, State of Texas



**Exhibit A**  
**(The Property)**

**1. PHASES FOUR A & FOUR B**

BEING a 77.897 acre tract of land situated in the Edward Teal Survey, Abstract No. 207, City of Heath, Rockwall County, Texas, and being part of a called 94.13 acre tract of land (Tract 1), described in deed to TR Heath Partners, Ltd., as recorded in Volume 4531, Page 38, Deed Records, Rockwall County, Texas and all of a called 1.246 acre tract of land described in deed to TR Heath Partners, Ltd., as recorded in Instrument 201900000103 of said Deed Records, said 77.897 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found for the southwest corner of said 1.246 acre tract and the northwest corner of Lot 3, Block A, Dixon Addition No. 3, an addition to the City of Heath, as recorded in Cabinet D, Slide 116, Plat Records, Rockwall County, Texas, said corner being in the east boundary line of a called 171.275 acre tract of land described in deed to B.C. Golf II Limited, as recorded in Volume 4629, Page 320 of said Deed Records and also being in or near the center of said White Road, an undedicated public road at this point;

THENCE North 00 degrees 19 minutes 33 seconds West, with the common boundary line of said 1.246 acre tract and said 171.246 acre tract and generally along said White Road, a distance of 236.01 feet to a 1/2-inch iron rod found for the northwest corner of said 1.246 acre tract, said corner being in the south boundary line of the Kyser-Peck Cemetery;

THENCE North 88 degrees 29 minutes 27 seconds East, with the common boundary line of said 1.246 acre tract and said Cemetery and generally along said White Road, a distance of 130.00 feet to a 1/2-inch iron rod found for corner in the westerly boundary line of said 94.13 acre tract;

THENCE North 01 degrees 14 minutes 29 seconds West, continuing with the common boundary line of said 94.13 acre tract and said Cemetery and generally along said White Road a distance of 257.62 feet to a 1/2-inch iron rod found for corner;

THENCE North 71 degrees 13 minutes 22 seconds West, with the common boundary line of said 94.13 acre tract and said Cemetery and generally along said White Road, a distance of 96.89 feet to a 1/2-inch iron rod found for corner in the east boundary line of said 171.275 acre tract;

THENCE North 01 degrees 14 minutes 29 seconds West, with the common boundary line of said 94.13 acre tract and said 171.275 acre tract and generally along said White Road, passing the northeast corner of said 171.275 acre tract, a total distance of 2234.04 feet to a 1/2-inch iron rod set in the south line of Buffalo Creek Country Club Estates, Phase Two, an addition to the City of Heath, as recorded in Cabinet C, Slide 172 of said Plat Records, said corner being within a tributary of Buffalo Creek (Tributary 8);

THENCE South 53 degrees 20 minutes 00 seconds East, with the common boundary lines of said Buffalo Creek Country Club Estates, Phase Two and said 94.13 acre tract, a distance of 63.37 feet to a 1/2-inch iron rod set for corner;

THENCE South 01 degrees 14 minutes 29 seconds East, 50 feet from and parallel to the common boundary line of said 94.13 acre tract and said 171.275 acre tract, a distance of 1610.56 feet to a 1/2-inch iron rod set for corner;

THENCE North 88 degrees 45 minutes 31 seconds East, a distance of 84.14 feet to a 1/2-inch iron rod set for the beginning of a tangent curve to the left having a radius of 125.00 feet whose chord bears North 59 degrees 12 minutes 14 seconds East, a distance of 123.31 feet;

THENCE Northeasterly, with said curve to the left, through a central angle of 59 degrees 06 minutes 34 seconds, an arc distance of 128.96 feet to a 1/2-inch iron rod set for the end of said curve;

THENCE North 29 degrees 38 minutes 57 seconds East, passing a 1/2-inch iron rod set for reference at 916.74 feet and continuing a total distance of 1031.73 feet to a point for corner in the common boundary lines of said Buffalo Creek Country Club Estates, Phase Two and said 94.13 acre tract;

THENCE Southeasterly, with the common boundary lines of said Buffalo Creek Country Club Estates, Phase Two and said 94.13 acre tract and generally along the meanders of said Tributary 8, the following courses:

- North 70 degrees 04 minutes 00 seconds East, a distance of 120.65 feet;
- South 82 degrees 26 minutes 00 seconds East, a distance of 121.10 feet;
- South 23 degrees 41 minutes 00 seconds East, a distance of 152.80 feet;
- North 86 degrees 09 minutes 00 seconds East, a distance of 47.60 feet;
- South 26 degrees 40 minutes 00 seconds East, a distance of 104.70 feet;
- South 50 degrees 25 minutes 00 seconds East, passing the south corner of said Buffalo Creek Country Club Estates, Phase Two and continuing with the common boundary lines of said 94.13 acre tract and a tract of land conveyed to B.C. Goff, Ltd, as recorded in Volume 596, Page 211 of said Deed Records and along the meanders of said Tributary, a total distance of 402.50 feet;

THENCE Southeasterly, with the common boundary lines of said Goff tract and said 94.13 acre tract and generally along the meanders of said Tributary, the following courses:

- South 68 degrees 53 minutes 00 seconds East, a distance of 64.60 feet;
- South 56 degrees 54 minutes 00 seconds East, a distance of 267.60 feet;
- South 00 degrees 34 minutes 00 seconds East, a distance of 50.90 feet;
- South 54 degrees 39 minutes 00 seconds East, a distance of 70.90 feet;
- North 61 degrees 55 minutes 00 seconds East, a distance of 54.80 feet;
- South 39 degrees 37 minutes 00 seconds East, a distance of 39.40 feet;
- South 19 degrees 31 minutes 00 seconds West, a distance of 58.10 feet;
- South 34 degrees 41 minutes 00 seconds East, a distance of 101.80 feet;
- North 72 degrees 55 minutes 00 seconds East, a distance of 65.90 feet;
- South 28 degrees 17 minutes 00 seconds East, a distance of 143.00 feet;
- South 19 degrees 36 minutes 00 seconds West, a distance of 81.00 feet;
- North 70 degrees 11 minutes 00 seconds East, a distance of 57.60 feet;

- South 70 degrees 08 minutes 00 seconds East, a distance of 39.40 feet;
- South 24 degrees 25 minutes 00 seconds West, a distance of 101.00 feet;
- South 13 degrees 34 minutes 00 seconds East, a distance of 130.00 feet;
- South 56 degrees 35 minutes 00 seconds East, a distance of 76.90 feet;
- South 07 degrees 23 minutes 00 seconds East, a distance of 61.70 feet;
- South 32 degrees 10 minutes 00 seconds East, a distance of 93.90 feet;
- South 67 degrees 28 minutes 00 seconds East, a distance of 105.50 feet;
- North 47 degrees 05 minutes 00 seconds East, a distance of 163.00 feet;
- South 02 degrees 16 minutes 00 seconds East, a distance of 14.60 feet;
- North 18 degrees 10 minutes 00 seconds East, a distance of 50.40 feet;
- South 56 degrees 52 minutes 00 seconds East, a distance of 35.90 feet;
- South 06 degrees 01 minutes 00 seconds East, a distance of 109.50 feet;
- South 66 degrees 14 minutes 00 seconds East, a distance of 54.50 feet;
- North 63 degrees 10 minutes 00 seconds East, a distance of 34.80 feet;
- North 12 degrees 58 minutes 00 seconds East, a distance of 48.00 feet;
- South 79 degrees 35 minutes 00 seconds East, a distance of 126.80 feet to the intersection of said Tributary with Buffalo Creek;

THENCE Southeasterly, with the easterly boundary lines of said 94.13 acre tract and the meanders of Buffalo Creek, the following courses:

- South 06 degrees 16 minutes 00 seconds East, a distance of 66.20 feet;
- South 25 degrees 35 minutes 00 seconds West, a distance of 51.30 feet;
- South 49 degrees 28 minutes 00 seconds West, a distance of 168.60 feet;
- South 02 degrees 13 minutes 00 seconds West, a distance of 68.80 feet;
- South 35 degrees 26 minutes 00 seconds East, a distance of 59.00 feet;
- South 87 degrees 25 minutes 00 seconds East, a distance of 61.00 feet;
- South 18 degrees 28 minutes 00 seconds West, a distance of 138.50 feet;
- South 52 degrees 38 minutes 00 seconds West, a distance of 53.80 feet;
- South 17 degrees 38 minutes 00 seconds West, a distance of 47.60 feet;
- South 09 degrees 27 minutes 00 seconds East, a distance of 70.70 feet;
- South 29 degrees 59 minutes 00 seconds East, a distance of 95.40 feet;
- South 55 degrees 10 minutes 00 seconds East, a distance of 52.10 feet;
- South 89 degrees 01 minutes 00 seconds East, a distance of 62.00 feet;
- South 02 degrees 52 minutes 00 seconds East, a distance of 144.10 feet;
- South 16 degrees 01 minutes 05 seconds East, a distance of 121.60 feet to the north line of Heath Crossing, Phase 1C-1D, an addition to the City of Heath, as recorded in Cabinet G, Slide 171 of said Plat Records;

THENCE Northwesterly, with the common boundary lines of said Phase 1C-1D and said 94.13 acre tract, the following courses:

- North 38 degrees 20 minutes 52 seconds West, a distance of 214.20 feet;
- North 32 degrees 25 minutes 36 seconds West, a distance of 315.56 feet;



- North 67 degrees 26 minutes 13 seconds West, a distance of 232.73 feet to a 1/2-inch iron rod with cap stamped "GRIFFITH" found;
- North 23 degrees 14 minutes 22 seconds West, a distance of 149.40 feet;
- South 65 degrees 44 minutes 03 seconds West, a distance of 165.56 feet;
- North 81 degrees 03 minutes 37 seconds West, a distance of 251.70 feet to a 1/2-inch iron rod found;
- North 39 degrees 13 minutes 37 seconds West, a distance of 111.16 feet to a 1/2-inch iron rod found;
- South 85 degrees 19 minutes 09 seconds West, a distance of 171.48 feet to a 1/2-inch iron rod found;
- South 61 degrees 33 minutes 28 seconds West, a distance of 314.93 feet;
- North 76 degrees 45 minutes 44 seconds West, a distance of 101.72 feet to a 1/2-inch iron rod found;
- South 70 degrees 01 minutes 45 seconds West, a distance of 407.84 feet to the northwest corner of said Phase 1C-1D and the north corner of Heath Crossing, Phase One, an addition to the City of Heath, as recorded in Cabinet F, Slide 315, Plat Records, Rockwall County, Texas;

THENCE South 69 degrees 41 minutes 40 seconds West, with the common boundary line of said Phase One and said 94.13 acre tract, a distance of 577.85 feet to a 1/2-inch iron rod set for the southwest corner of said 94.13 acre tract and the northwest corner of said Phase One, said corner being in the east boundary line of Lot 3, Block A, of the aforementioned Dixon Addition No. 3;

THENCE North 01 degrees 48 minutes 04 seconds West, with the common boundary line of said Lot 3 and said 94.13 acre tract, a distance of 140.29 feet to the northeast corner of said Lot 3 and the south east corner of the aforementioned 1.246 acre Florida Company tract from which a 1/2-inch iron rod found bears North 73 degrees 47 minutes 53 seconds East, a distance of 0.40 feet;

THENCE South 88 degrees 18 minutes 52 seconds West, with the common boundary line of said Lot 3 and said 1.246 acre tract, a distance of 251.00 feet to the POINT OF BEGINNING AND CONTAINING 3,393,197 square feet or 77.897 acres of land.

## 2. PHASE FIVE

BEING a 17.483 acre tract of land situated in the Edward Teal Survey, Abstract No. 207, City of Heath, Rockwall County, Texas, and being part of a called 94.13 acre tract of land (Tract 1), described in deed to TR Heath Partners, Ltd., as recorded in Volume 4531, Page 38, Deed Records, Rockwall County, Texas, said 17.483 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod set for corner in the northeast boundary line of said 94.13 acre tract from which the north corner of said 94.13 acre tract bears North 53 degrees 20 minutes 00 seconds West, a distance of 63.37 feet, said corner being in the south boundary line of Buffalo Creek Country Club Estates, Phase Two, an addition to the City of Heath, as recorded in Cabinet C, Slide 172 of said Plat Records and being within a tributary of Buffalo Creek (Tributary 8);

THENCE Southeasterly, with the common boundary lines of said Buffalo Creek Country Club Estates, Phase Two and said 94.13 acre tract and generally along the meanders of said Tributary 8, the following courses:

- South 53 degrees 20 minutes 00 seconds East, a distance of 45.94 feet;
- South 89 degrees 07 minutes 00 seconds East, a distance of 77.90 feet;
- South 65 degrees 24 minutes 00 seconds East, a distance of 52.50 feet;
- North 79 degrees 20 minutes 00 seconds East, a distance of 62.20 feet;
- South 71 degrees 21 minutes 00 seconds East, a distance of 142.79 feet;
- South 46 degrees 11 minutes 00 seconds East, a distance of 89.20 feet;
- North 84 degrees 54 minutes 00 seconds East, a distance of 77.89 feet;
- South 07 degrees 37 minutes 00 seconds East, a distance of 41.70 feet;
- South 53 degrees 14 minutes 00 seconds East, a distance of 99.10 feet;
- South 01 degrees 45 minutes 00 seconds East, a distance of 102.30 feet;
- South 34 degrees 04 minutes 00 seconds East, a distance of 113.20 feet;
- South 00 degrees 55 minutes 00 seconds East, a distance of 194.43 feet;
- South 77 degrees 16 minutes 00 seconds East, a distance of 81.94 feet;

THENCE South 29 degrees 38 minutes 57 seconds West, passing a 1/2-inch iron rod set for reference at a distance of 115.00 feet, a total distance of 1031.73 feet to a 1/2-inch iron rod set for the beginning of a tangent curve to the right having a radius of 125.00 feet whose chord bears South 59 degrees 12 minutes 14 seconds West, a distance of 123.31 feet;

THENCE Southwesterly, with said curve to the right, through a central angle of 59 degrees 06 minutes 34 seconds, an arc distance of 128.96 feet to a 1/2-inch iron rod set for the end of said curve;

THENCE South 88 degrees 45 minutes 31 seconds West, a distance of 84.14 feet to a 1/2-inch iron rod set for corner;

THENCE North 01 degrees 14 minutes 29 seconds West, 50 feet from and parallel to the west boundary line of said 94.13 acre tract, a distance of 1610.60 feet to the POINT OF BEGINNING AND CONTAINING 761,545 square feet or 17.483 acres of land.

Filed and Recorded  
Official Public Records  
Jennifer Fogg, County Clerk  
Rockwall County, Texas  
03/01/2021 03:39:34 PM  
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2021000004762



*Jennifer Fogg*