

**CERTIFICATE FOR
RECORDATION OF DEDICATORY INSTRUMENT OF
NORTH BETHANY LAKE ESTATES HOMEOWNERS ASSOCIATION, INC.**

STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

§

WHEREAS, Section 202.006 of the Texas Property Code requires that “A property owners’ association shall file its dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relates is located.”; and

WHEREAS, North Bethany Lake Estates Homeowners Association, Inc., a Texas nonprofit corporation (the “Association”) desires to comply with Section 202.006 by filing of record in the real property records of Collin County, Texas, the attached instrument; and

WHEREAS, the attached instrument constitutes a “dedicatory instrument” as defined by Section 202.001 of the Texas Property Code; and

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for North Bethany Lake Estates Homeowners Association, Inc., Executed by JLL Development I, L.P. a Texas limited partnership, as Declarant, and recorded on or about September 14, 1999 at Instrument #99-0115512 in the Real Property Records of Collin County, Texas, including any amendments thereof, additions, annexations and supplements thereto and entitled “Declaration of Covenants, Conditions and Restrictions for the Lots in North Bethan Lake Estates Phase One” (the “Declaration”) subjected to the scheme of development therein certain land described in the Declaration, Bylaws, and Plats of the Association and located in Collin County, Texas;

NOW THEREFORE, the undersigned authorized representative of the Association hereby executes this Certificate to effect the recording of the dedicatory instrument attached hereto on behalf of the Association.

[signature page follows]

EXECUTED this ___, day of May, 2023

North Bethany Lake Estates Homeowners Association, Inc.,
A Texas non-profit corporation

By: _____
Heather Young, President & Director

STATE OF TEXAS

§

COUNTY OF COLLIN

This instrument was acknowledged before me on the ___, day of May, 2023, by Heather Young, President & Director of North Bethany Lake Estates Homeowners Association, Inc., a Texas nonprofit corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

After Recording, Return to:
Manning & Meyers, Attorneys at Law
4340 N. Central Expressway, Suite 200
Dallas, TX 75206

**SECOND AMENDED & RESTATED DECLARATION OF
THE NORTH BETHANY LAKE ESTATES HOMEOWNERS ASSOCIATION, INC.**

STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

§

This SECOND AMENDED & RESTATED DECLARATION OF THE NORTH BETHANY LAKE ESTATES HOMEOWNERS ASSOCIATION, INC. (the "Amendment") is made effective as of the date of its filing in the Collin County Real Property Records.

WITNESSETH

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for North Bethany Lake Estates Homeowners Association, Inc., Executed by JLL Development I, L.P. a Texas limited partnership, as Declarant, and recorded on or about September 14, 1999 at Instrument #99-0115512 in the Real Property Records of Collin County, Texas, including any amendments thereof, additions, annexations and supplements thereto and entitled "Declaration of Covenants, Conditions and Restrictions for the Lots in North Bethan Lake Estates Phase One" (the "Declaration- Phase One") designating The North Bethany Lake Estates Homeowners Association, Inc. (the "Association") to administer and enforce the Covenants and Restrictions contained in the Declaration; and

WHEREAS, Phase Two of North Bethany Lake Estates was subsequently added to the Association by the filing of the Declaration of Covenants, Conditions and Restrictions for North Bethany Lake Estates Phase Two, Executed by JLL Development I, L.P. a Texas limited partnership, as Declarant, and recorded on or about June 29, 2000 at Instrument #2000-0067681 in the Real Property Records of Collin County, Texas, including any amendments thereof, additions, annexations and supplements thereto and entitled "Declaration of Covenants, Conditions and Restrictions for the Lots in North Bethan Lake Estates Phase Two" (the "Declaration- Phase Two");

WHEREAS, the on or about October 25, 2000 an Amendment for the Declaration of Covenants, Conditions and Restrictions for the lots in North Bethany Lake Estates Phase One was recorded at Instrument #2000-0116947 and entitled "First Amendment to Declaration of Covenants, Conditions and Restrictions for the Lots in North Bethany Lake Estates Phase One (the "First Amendment to Declaration-Phase One");

WHEREAS, the on or about June 22, 2015 an Amendment for the Declaration of Covenants, Conditions and Restrictions for the lots in North Bethany Lake Estates Phase One and Phase Two was recorded at Instrument #20150622000743060 and entitled "Second Amended Declaration of Covenants, Conditions and Restrictions for the Lots in North Bethany Lake Estates Phase One and Two (the "First Amended and Restated Declaration for Phase One and Phase Two");

WHEREAS, collectively both Phase One and Phase Two of North Bethany Lake Estates are governed by the Amended & Restated Declaration. This Declaration remains in full force and effect;

WHEREAS, the Association, desires to amend the First Amended & Restate Declaration in certain respects;

WHEREAS, Article IV, Section 4.10 of the Amended and Restated Declaration provides that *“declaration and the covenants, conditions and restriction set forth herein may be amended in whole or in part with the consent of more than 50% of the Owners of the lots (with one vote to be cast for each Lot owned) evidenced by a document in writing bearing the signatures of such majority owners;”* and

WHEREAS, Section 209.0041(h) of the Texas Property Codes states that *“a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners’ association, in addition to any governmental approval required by law. If the declaration contains a lower percentage, the percentage in the declaration controls”* and

WHEREAS, Section 209.0041(e) and (f) of the Texas Property Codes states that

“(e) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

“(f) This section supersedes any contrary requirement in a dedicatory instrument”.

WHEREAS, the Association has met the requirements of Section 209.0041(h) of the Texas Property Code. This amendment was voted upon and approved by a vote of 50% or more of votes allocated to the property owners within North Bethany Lake Estates Homeowners Association; and

RESOLVED, that pursuant to the provisions of the Declaration and Section 209.0041(h) of the Texas Property Code, the Declaration of The North Bethany Lake Estates Homeowners Association, Inc. are hereby revoked and replaced with the following Second Amended & Restated Declaration of The North Bethany Lake Estates Homeowners Association, Inc. The North Bethany Lake Estates Homeowners Association, Inc. declares that the Property and all portions thereof are and shall be held, transferred, assigned, sold, conveyed and occupied subject to all covenants, conditions, restrictions, easements, liens and charges contained in the Declaration, as modified and amended herein.

**SECOND AMENDED & RESTATED DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS**

**NORTH BETHANY LAKE ESTATES HOMEOWNERS
ASSOCIATION, INC.**

Collin County, Texas

**DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
NORTH BETHANY LAKE ESTATES HOMEOWNERS ASSOCIATION, INC.**

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ARTICLE I
DEFINITIONS

The following words when used in this Second Amended & Restated Declaration (unless the context shall otherwise prohibit) shall have the following meanings:

- (a) **"Architectural Control Committee"** and **"ACC"** shall mean and refer to the Architectural Control Committee described in Article XI hereof.
- (b) **"Assessment"** means any charge levied against a Lot or Owner by the Association, pursuant to the Documents or State law, including but not limited to Annual Assessments, Special Assessments, and Special Individual Assessments as defined in this Declaration.
- (c) **"Articles of Incorporation"** shall mean and refer to the Articles of Incorporation of the Association filed with the Texas Secretary of State as may be amended from time to time.
- (d) **"Association"** means the Association of Owners of all Lots in the Property, initially organized as North Bethany Lake Estates Homeowners Association, Inc., a Texas nonprofit corporation, and serving as the "property owners' association" defined in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration and the Bylaws.
- (e) **"Board"** or **"Board of Directors"** shall mean and refer to the Board of Directors of the Association.
- (f) **"City"** shall mean the City of Allen or any other municipal authority.
- (g) **"Common Area"** means the land more particularly described in the Plat as recorded at Volume L, Page 319 of the Map records of Collin County, Texas and made a part hereof for all purposes. No part of a Common Area is situated within a Lot and any other property rights which are known, described or designated for, or which shall subsequently be intended for or devoted to, the common use and enjoyment of the Members.
- (h) **"Common Improvements"** means those improvements initially made by Declarant and any subsequently made by the Association, within the Common Area with such other improvements as have been or may be made hereafter by the Association.
- (i) **"Common Properties"** means the Common Area and Common Improvements, collectively. In certain circumstances, Common Properties may not be owned by the Association in fee, but may, in some instances, be held as an easement, be leased, or may simply be areas of land that are not owned or leased by the Association but which are maintained by the Association for the use and benefit of the Owners of the Association. An example of areas of Common Properties which may not be owned or leased by the Association but would constitute as portion of the Common Properties would be landscaped areas appurtenant to and within public rights-of way.
- (j) **"Declarant"** shall mean and refer to JLL Development I, L.P. a Texas limited partnership, and their successors and assigns. Declarant has assigned any and all rights that it owned to the Association. The Declarant no longer has any rights or responsibilities as related to North Bethany Lake Estates.

- (k) **"Declaration"** means this Document, as it may be amended from time to time. It may also refer to the original Declaration of the Association as filed within the Collin County Real Property Records in 1999, and any amendment or supplement thereto.
- (l) **"Documents"** means, singly or collectively as the case may be, any dedicatory instrument for the North Bethany Lake Estates, including, but not limited to, this Declaration, the Plat, the Bylaws, the Association's Articles of Incorporation, and the Rules of the Association, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is a part of that Document.
- (m) **"Dwelling"** means any and all permanent structures built upon a lot for purpose or purposes of occupancy as a residence or habitation.
- (n) **"Lot"** means a portion of the Property intended for independent ownership, on which there is or will be constructed a Dwelling, as shown on the Plat. Where the context indicates or requires, "Lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the Lot.
- (o) **"Majority"** means more than half.
- (p) **"Member"** means a Member of North Bethany Lake Estates, each Member being an Owner of a Lot within the Association, unless the context indicates that Member means a Member of the Board or a Member of a Committee of the Association.
- (q) **"Owner"** means a holder of recorded fee simple title to a lot within North Bethany Lake Estates. Declarant is the initial Owner of all Lots. Contract sellers and mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not owners. Every Owner is a Member of the Association.
- (r) **"Plat"** means all Plats, singly and collectively, recorded in the Real Property Records of Collin County, Texas, and pertaining to the tract which is platted or to be platted as North Bethany Lake Estates Homeowners Association, Inc., a subdivision to the Collin County, Texas. The Plat for Phase One is recorded at Volume L, Page 319 of the Map records of Collin County, Texas. The Plat for Phase Two is recorded at Volume L, Page 959 in the Map records of Collin County, Texas. These Plats include all dedications, limitations, restrictions, easements, and reservations shown on the Plat, as it may be amended from time to time.
- (s) **"Property" or "Properties"** means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is North Bethany Lake Estates Homeowners Association, Inc- Phase One and Phase Two. The Property is located on land described in the Deed Records of Collin County, Texas and includes every Lot and any Common Area thereon.
- (t) **"Easement Property"** shall mean and refer to private areas and easements marked on the Plat. It is expressly provided that if there is ever any dispute concerning the exact description of the Easement Property, the Board shall retain a surveyor and direct such surveyor to describe the

Easement Property by metes and bounds generally describe herein. The legal description developed by such surveyor shall become the legal description for the Easement Property.

- (u) **"Resident"** means an occupant of a Dwelling, regardless of whether the person owns the Lot.
- (v) **"Rules"** means Rules, Regulations and Restrictions of the Association adopted in accordance with the Documents or the Act.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.01 **Existing Properties.** The Properties which are, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration are located in Collin County, State of Texas, and are more particularly described on the recorded Plats for North Bethany Lake Estates Subdivision Addition, which are incorporated herein by reference for all purposes. This Declaration binds all parties having or acquiring any right, title, or Interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each owner of the Property.

2.02 **Common Properties.** The Common Properties of the Property consists of the following components on or adjacent to the Property, even if located on a lot or a public right-of-way:

- (a) All of the Property, save and except the Lots.
- (b) Any area shown on the Plat as Common Area or an area to be maintained by the Association;
- (c) The detention pond on Lot 15, Block C of the Property, located directly behind the entrance sign.
- (d) Lot 1 S, Block C and all landscaping, fencing, monuments, and screening easements in those areas dedicated to the North Bethany Lake Estates. This includes, but is not limited to the formal entrances to the Property, including (if any) signage, landscaping, electrical and water installations, trashcans, benches, planter boxes and fencing located thereon;
- (e) The fencing running the length of the Property on Bethany Road and Angel Parkway.
- (f) Any modification, replacement, or addition to any of the above-described areas and improvements; and
- (g) Personal property owned by the Association, such as books and records, office equipment, and supplies.

2.03 **Streets within the Property.** Because streets and cul-de-sacs within the Property (hereafter "streets") are capable of being converted from publicly dedicated to privately owned, and vice versa, this Section addresses both conditions. Private streets are part of the Common Properties, which is governed by the Association. Public streets are part of the Common Properties only to the extent they are not maintained or regulated by the city or county. To the extent not prohibited by public law, the Association, acting through the Board, is specifically authorized to adopt, amend, repeal, and enforce Rules, Regulations, and procedures for use of the streets - whether public or private - including but not limited to:

- a. Identification of vehicles used by Owners and Residents and their guests.
- b. Designation of speed limits and parking or no-parking areas.

- c. Removal or prohibition of vehicles that violate applicable Rules and Regulations.
- d. Fines for violations of applicable Rules and Regulations.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01 **Membership.** Each Owner is a Member of the Association, ownership of a lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Lot. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Lot is owned by more than one person or entity, each co-owner is a Member of the Association and may exercise the membership rights appurtenant to the Lot. A member who sells his Lot under a contract for deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all Assessments attributable to his Lot until fee title to the Lot is transferred.

3.02 **Classes of Membership.** The Association shall have only one class of voting membership- Class A Members. Class A Members shall be all Members and shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

3.03 **Voting.** One vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. If additional property is made subject to this Declaration, the total number of votes will be increased automatically by the number of additional lots or tracts. Each vote is uniform and equal to the vote appurtenant to every other Lot. Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association's Bylaws.

3.04 **Voting by Co-Owners.** The one vote appurtenant to a Lot is not divisible. Where there are multiple Owners of a Lot it is not intended by any provision of the Declaration or the Bylaws that each of said Owners shall be entitled to cast the votes allocated to such Lot nor may fractional votes be cast. When more than one person or entity owns the interest or interests in any Lot, as required for membership in the Association, each and every person or entity shall exercise their vote as they among themselves, collectively determined and they shall designate one person to cast the vote or execute a written consent, as applicable. If such owners are unable to agree among themselves as to how one vote per Lot shall be cast, they shall forfeit the right to vote on the matter in question. If more than one person or entity purports to exercise the voting rights with respect to any such Lot on any matter in question, none of such votes shall be counted in tabulating the vote on such matter and such votes shall be deemed void.

Owners of exempt properties as described below in this Declaration shall be Members but shall not have voting rights.

3.05 **Quorum, Notice, and Voting Requirements.**

- (a) The presence, in person or by proxy, of Members entitled to cast, or of proxies entitled to cast, at least ten percent (10%) of the votes of all Owners shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or Bylaws.

- (b) "Proxies" At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary or the Association's managing agent at least 24 hours before the appointed time of each meeting. Proxies shall be revocable and shall be valid until the adjournment of the meeting for which they were given, unless such meeting is adjourned and reconvened, in which case the proxy shall remain valid until such reconvened meeting is adjourned. Except as otherwise specifically set forth in this Declaration, notice, voting, and quorum requirements for all actions to be taken by the Association shall be consistent with its Articles of Incorporation and Bylaws, as same may be amended from time to time.
- (c) Except as specifically set forth in this Declaration, notice, voting, and quorum requirements to be taken by the Association shall be consistent with its Articles of Incorporation Bylaws, and State Law.
- (d) If a quorum required in the North Bethany Lake Estates Dedicatory Instruments is not obtained at any meeting of the members where Directors are to be elected, the following process will be implemented to provide for the election of Directors:
 - a. The Secretary of the Board of Directors shall announce that no quorum has been obtained for the meeting of the members.
 - b. The owners present, in person, by proxy or by electronic ballot, shall then convene an election meeting.
 - c. The owners present, in person, by proxy or by electronic ballot, will constitute a quorum for the purpose of conducting such meeting and an election of directors shall be conducted.
 - d. No other business of the Association will be conducted at such election meeting. No notice of such meeting need be given to the members other than the notice sent to the members of the annual or special meeting which did not previously meet quorum.

3.06 **Books & Records.** The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Article 1396-2.23.B. of the Texas Nonprofit Corporation Act and the Document Inspection and Copying's Policy.

3.07 **Indemnification.** The Association indemnifies every Officer, Director, and Committee Member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith.

3.08 **Alternative Notice.** The Association encourages owners to use electronic communication in communicating with the Association. An owner within the Association may elect to allow the Association to provide notice to the owner via electronic means for which another method is proscribed by law. Should an owner wish to be noticed electronically, that owner may notify the Association.

ARTICLE IV
EASEMENTS

4.01 **Members' Easements of Enjoyment.** Subject to the provisions of this article, every Member who resides on a Lot, and each individual who resides within them, respectively, on such Lot shall have a non-exclusive right and easement of use and enjoyment in and to the Common Properties, and such Easement shall be appurtenant to and shall pass with the title of every Lot; provided, however, such Easement shall not give such person the right to make alterations, additions, or improvements to the Common Properties.

4.02 **Easement Right of Way.** All property within the subdivision shall be subject to the easements, rights-of-way, and other provisions and dedications which appear on the plats of North Bethany Lake Estates Subdivision. The Plat for Phase One is recorded at Volume L, Page 319 of the Map records of Collin County, Texas. The Plat for Phase Two is recorded at Volume L, Page 959 in the Map records of Collin County, Texas. Each property shall be subject to the provisions of all other instruments filed for record and relating to the land in the subdivision.

4.05 **Association Easements.** The Association shall have a non-exclusive right and easement to access and maintain the Easement Property. Such easement shall be appurtenant to and shall pass with the title of every Lot containing Easement Property for the benefit of the Common Properties and the Association.

4.06 **Extent of Association Easements.** The rights and the easements created hereby in the Easement Property shall be subject to and limited by the right of the Association to enter into and execute contracts with parties for the purpose of providing maintenance for all or a portion of the Property. The Association shall consistently maintain the Easement Property in a way that preserves the common areas and landscaping in a consistent, attractive manner for the visual benefits of all Owners.

4.07 **Duration of Easements.** The easements referenced herein are perpetual. The Association may assign this easement, or any portion thereof, to the City if the City agrees to accept the assignment.

4.08 **Risk.** Each Resident uses all Common Properties at their own risk. All Common Properties are unattended and unsupervised. Each Resident is solely responsible for their own safety and the safety of their guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the Common Properties.

ARTICLE V
COVENANTS AND ASSESSMENTS

5.01 **Creation of the Lien and Personal Obligation for Assessments.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his Lot.

5.02. **Types of Assessments.** The Association may charge a number of different types of Assessments to Owners within the Association. At the discretion of the Board, these Assessments may be separately budgeted, separately accounted for, and if necessary, separate bank accounts maintained. These

Assessments include:

- (1) Annual Maintenance Assessments and charges incurred for the benefit of all Property Owners as defined in 5.06 (a), and allocated equally and commonly among all Property Owners;
- (2) Special Assessments for capital improvements and other purposes;
- (3) Special Individual Assessments levied against one or more Owners to reimburse the association for extra costs for maintenance and repairs under this Declaration or resulting from the willful or negligent acts or omissions of such Owner or Owners, his tenants (if applicable) and their respective family, agents, guests, and invitees; and

5.03 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the property and in particular for:

- (a) The improvement and maintenance of the Common Properties;
- (b) The maintenance, repair and reconstruction, when needed as determined by the Association or Board, of the Association's responsibilities under this Declaration;
- (c) The payment of taxes and public assessments levied against the Common Properties;
- (d) The procurement and maintenance of insurance in accordance with this Declaration;
- (e) The employment of attorneys to represent the Association, when necessary or desirable;
- (f) The provision of adequate reserves for the restoration or replacement of capital improvements for which the Association is responsible under this Declaration;
- (g) General and administrative, management, legal, and accounting costs, etc. and
- (h) Such other needs as may arise in the performance of the Association's obligations under this Declaration.

The Assessments the Association is authorized to levy under this Section and under other applicable provisions of this Declaration shall include, but shall not be limited to, the costs and expenses incurred or to be incurred by the Association in managing, administering, paying for, or contracting for the performance of any of the items listed in subparagraphs (a) through (h) above.

5.04 **Reserves.** The Association may establish and maintain adequate reserve funds for the normal routine maintenance, repair, restoration and/or replacement of improvements in the Common Properties and those other portions of the Property which the Association may be obligated to maintain. If established, such reserve funds shall be budgeted, accounted for and maintained, insofar as is practicable, out of regular Assessments.

5.05 **Responsibility of Association for Assessments.** The Association has the responsibility and duty of maintaining the Common Properties including, but not limited to, the payment of taxes on and Insurance in connection with respect to the Common Properties and with respect to both the Common Properties, the cost of repairs, replacements, and additions thereto, and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties and Easement Property.

5.06 **Annual Assessments.** The Annual Assessments are comprised of Assessments defined in (a) and (b) below:

- (a) For the management and upkeep of the Common Properties and general Association operating costs, the Board shall determine the amount of the Annual Maintenance Assessments for each year, which Assessments may include a reserve fund for working capital and may include a reserve fund for normal routine maintenance, repairs, and replacements. This portion of the Annual Maintenance Assessment defined in (c) below is apportioned equally to all Lot Owners.
- (b) The Board shall cause to be prepared an estimated annual Assessment for each fiscal year of the Association, taking into account all anticipated expenses. The proposed annual Assessment against each Lot for each fiscal year shall be approved and adopted by the Board. A copy of the proposed budget, including the total proposed Annual Assessments against each Lot, shall be made available to each Owner at that lot owner's written request.
- (c) Annual Assessments are determined by the Board and may be increased by the Board without a vote of the membership but subject to the following limitations:
 - (i) Veto Increased Annual Assessments. The Board will notify Owners of each lot of the amount of, the budgetary basis for, and the effective date of the increase per 5.06 (c) above. The increase will automatically become effective unless Owners of at least 51% of the Lots disapprove the increase by petition or at a meeting of the Association within thirty (30) days after the effective date of the increase. In that event, the last approved budget will continue in effect until a revised budget is approved. The Board may not increase the annual assessment greater than 15% per fiscal year unless Owners of at least 51% of the Lots approve the increase by petition or at a meeting of the Association.
 - (ii) Veto Special Assessments. The Board of Directors may propose and request that the members vote upon a Special Assessment. At least 30 days prior to the effective date of a Special Assessment, the board will notify Owners of each lot of the amount of, the budgetary basis for, and the proposed effective date of the Special Assessment. The Special Assessment will become effective unless owners of at least 51% of the lots approve the Special Assessment by petition or at a meeting of the Association within ninety (90) days of passage of the Board's resolution.
 - (iii) The Directors of the Association may alter the due date for the annual assessment by affirmative vote of a majority of the directors.
- (d) The Annual Assessments may be increased or decreased by the Board based upon the approved annual budget. The Board may, after consideration of current maintenance, operation and other costs, and the future needs of the Association, fix the Annual Assessments for any year at a lesser amount than that of the previous year.
- (e) The Board may provide that Annual Assessments shall be paid monthly, quarterly, semi-annually, or annually on a calendar year basis. The Board shall (i) estimate the total common expenses to be incurred by the Association for the forthcoming fiscal year, (ii) determine, in a manner consistent with the terms and provisions of this Declaration, the amount of the Annual Assessments to be paid by each Owner, and (iii) establish the date of commencement

of the Annual Assessments. Written notice of the Annual Assessments to be paid by each Member and the date of commencement thereof shall be sent to every Member, but only to one (1) Joint Owner. Each Member shall thereafter pay to the Association his Annual Assessments in such manner as determined by the Board.

- (f) The Annual Maintenance Assessment may include reasonable amounts, as determined by the Members or by the Board, collected as reserves for the future maintenance, repair, and/or replacement of all or a portion of the Common Properties and Easement Property. All amounts collected as reserves, for this purpose, shall be deposited in a separate bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association. Assessments collected as reserves for this purpose shall not be considered to be advance payments of regular annual maintenance assessments.

5.07 Special Assessments and Special Individual Assessments.

- (a) In addition to the Annual Maintenance Assessments authorized in this Declaration, the Board of the Association may levy in any fiscal year a Special Assessment for the purpose of (i) defraying, in whole or in part, the cost of any construction or reconstruction, repair, or replacement of improvements upon the Properties or Common properties, including the necessary fixtures and personal property related thereto, (ii) maintaining portions of the Common Properties and Easement Property and improvements thereon, or (iii) carrying out other purposes of the Association. All such amounts collected by the Association as a Special Assessment may only be used for the purposes that the Special Assessment was originally levied and shall be deposited by the Board in a separate bank account to be held in trust for such purpose. These funds shall not be commingled with any other fund of the Association. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

The City shall have authority to inspect all streets, drainage facilities, and related appurtenances on a periodic basis to determine the need for repairs to these capital facilities. The City shall not be obligated to maintain such private streets and drainage facilities but shall have the authority to make repairs to streets and drainage facilities if the Association fails to do so. In such event the City shall have the right to assess all costs plus interest accrued from the time the City installs such improvements until all funds are collected. Such assessments may be made against each Lot on a pro rata basis.

- (b) The Board may levy Special Individual Assessments against one or more Owners for (i) reimbursement to the Association of the costs for repairs to the Properties Common Properties and improvements thereto occasioned by the willful or negligent acts of such Owner or Owners; (ii) for payment of fines, penalties, or other charges imposed against an Owner or Owners relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws of the Association, or any rules or regulation promulgated hereunder. Any Special Individual Assessment levied by the Association shall be paid by the Owner or Owners directly to the Association. All amounts collected by the Association as Special Individual Assessments under this Section shall belong to and remain with the Association.

5.08 Date of Commencement of Assessments; Due Dates; No Offsets. The various Assessments provided for herein shall commence on a date or dates fixed by the Board of the Association to be the

date of commencement and except as hereinafter provided, shall be payable monthly, quarterly, semi-annually, or annually, in advance, on the first day of each payment period thereafter, as the case may be as the Board of Directors shall direct. All assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason. All assessments are due within thirty days of notice to an owner of the assessment unless otherwise stated within the notice sent to the owner.

5.09 **Duties of the Board with Respect to Assessments.**

- (a) The Board of the Association shall fix the date of commencement and the amount of the Annual Assessments against each Lot for each assessment period.
- (b) Written notice of all Assessments shall be delivered or mailed to every Owner subject thereto. Such notice shall be sent to each Owner at the last address provided by each Owner, in writing, to the Association.
- (c) The omission of the Board to fix the Annual Assessments within the time period set forth above for any year shall not be deemed a waiver of modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year, but the Assessments fixed for the preceding year shall continue until new Assessments are fixed.
- (d) The Board shall upon demand at any time furnish to any Owner liable for said Assessments a document, setting forth whether said Assessments have been paid. Such certificate shall be conclusive evidence of Payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

5.10 **Non-payment of Assessments.**

- (a) **Assessment Lien.** Each owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each owner, and each prospective owner, is placed on notice that his title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his Lot.
- (b) **Superiority of Assessment Lien.** The Assessment lien is superior to all other liens and encumbrances on a lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration, (3) a recorded deed of trust lien securing a loan for construction of the original Dwelling, and (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became due. The Assessment lien is subordinate and inferior to a recorded deed of trust lien that secures a first or senior purchase money mortgage, an FHA-insured mortgage, or a VA-guaranteed mortgage.
- (c) **Effect of Mortgagee's Foreclosure.** Foreclosure of a superior lien extinguishes the Associations' claim against the lot for unpaid Assessments that became due before the sale, but does not extinguish the Association claim against the former owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale, and for the owner's pro rata share of the pre-foreclosure delinquency as an Association Expense.

5.11 **Notice of Lien and Release of Lien.** The Association's lien for Assessments is created by recordation of the Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of Lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the county's real property records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing owner.

5.12 **Power of Sale.** By accepting an interest in or title to a Lot, each owner grants to the Association a private power of non-judicial sale in connection with the Association's assessment lien. The board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and recorded in the Real Property Records of Collin County, Texas.

5.13 **Foreclosure of Lien.** The Assessment lien may be enforced by judicial or non-judicial foreclosure. A foreclosure must comply with the requirements of Chapter 209 of the Texas Property Code. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the bylaws and the requirements of Chapter 209 of the Texas Property Code. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey said lot. The Association may not foreclose the Assessment lien if the debt consists solely of fines.

Yes, the HOA *can* foreclose!

If you fail to pay assessments to the Association, you may lose title to your home if the Association forecloses its assessment lien against your lot.

5.14 **Collection Due Date & Liability.** An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through the board, is responsible for taking action to collect delinquent Assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the bylaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the board nor the Association, however, is liable to an owner or other person for its failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

5.15 **Interest.** Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the board from time to time, not to exceed the maximum permitted by law. If the board fails to establish a rate, the rate is 18 percent per annum.

5.16 **Late Fees.** Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the board from time to time. If a rate is not set by the board, then the late fee is \$25.00 per month for each month that an owner's account owes assessments or any other charges. The board may waive late fees and costs of collection at its own discretion.

5.17 **Costs of Collection.** The owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorney's fees and processing fees charged by the manager.

5.18 **Acceleration.** If an Owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

5.19 **Suspension of Use of Common Areas.** If an Owner's account has been delinquent for at least 30 days, the Association may suspend the right of owners and residents to use common areas and common services during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments.

5.20 **Money Judgment.** The Association may file suit seeking a money judgment against an owner delinquent in the payment of Assessments, without foreclosing or waiving the Association's lien for Assessments.

5.21 **Notice to Mortgagee.** The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of Assessments.

5.22 **Foreclosure of Assessment Lien.** As provided by this Declaration, the Association may foreclose its lien against the lot by judicial or non-judicial means.

5.23 **Application of Payments.** Payments shall be applied in accordance with Chapter 209.0063 of the Texas Property Code. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the board's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the lot's account.

5.24 **Subordination of the Lien to Mortgages.** The lien securing the payment of the Assessments shall be subordinate and inferior to the lien of any purchase money liens, home improvement liens, or home equity liens hereafter recorded against any Lot; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale, whether public or private, of such property pursuant to the terms and conditions of any such mortgage or deed of trust such sale shall not relieve the new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent assessment.

5.25 **Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges, and liens created within this Declaration:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use.
- (b) All Common Properties.

5.26 **Estoppel Information from Board with Respect to Assessments.** The Board shall upon demand at any time furnish to any Owner liable for an Assessment, a ledger of that Owner's account which shall set forth whether said Assessment has been paid.

ARTICLE VI
REMEDIES FOR BREACH OF RULES & REGULATIONS OR DOCUMENTS

6.01 **Notice & Hearing.** Before the Association may exercise many of its remedies for a violation of the Documents or damage to the Property, the Association must give an Owner written notice and an opportunity for a hearing, according to the requirements and procedures in Chapter 209 of the Texas Property Code. Notices are also required before an Owner is liable to the Association for certain charges, including reimbursement of attorney's fees incurred by the Association.

6.02 **Remedies.** The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law.

6.03 **Nuisance.** The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

6.04 **Fines.** The Association may levy reasonable charges, as a Special Individual Assessment, against an Owner and his Lot if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents. Unless a fining policy is otherwise established by the directors of the Association, members shall be fined \$200.00 per week for each week the violation continues. The directors of the Association may waive or increase fines at their own discretion.

6.05 **Suspension.** The Association may suspend the right of Owners and Residents to use Common Properties for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

6.06 **Self-Help.** The Association has the right to enter a front yard of a Property, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The board may levy its costs of abatement against the lot and owner as a Special Individual Assessment. Unless an emergency situation exists in the good faith opinion of the board, the board will give the violating owner 30 days' notice of its intent to exercise self-help. The owner shall subsequently have the right to cure the violation without the Association resorting to self-help. No Owner within the Association may exercise self-help under this Section against another Owner.

6.07 **Suit.** Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

6.08 **Board Discretion.** The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the

Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

6.09 **No Waiver.** The Association and every Owner has the right to enforce all Restrictions, conditions, Covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Documents at any future time. No Officer, Director, or Member of the Association is liable to any owner for the failure to enforce any of the Documents at any time.

6.10 **Recovery of Costs.** The costs of curing or abating a violation are at the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

ARTICLE VII
GENERAL POWERS AND DUTIES OF
BOARD OF DIRECTORS OF THE ASSOCIATION

7.01 **Powers and Duties.** The affairs of the Association shall be conducted by the Board of Directors. In addition to the powers and duties enumerated in the Declaration or elsewhere herein, and without limiting the generality thereof, the Board, for the mutual benefit of the Members, shall have the powers and duties set forth in the Declaration and the following powers and duties:

- (a) If, as and where the Board, in its sole discretion, deems necessary it may take such action to enforce the terms and provisions of the Declaration, the Articles of Incorporation and the Bylaws by appropriate means and carry out the obligations of the Association thereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel and accounting services, the commencement of legal causes of action, the promulgation and enforcement of the Association Rules and Regulations which may include the establishment of a system of fines and/or penalties enforceable as Special Individual Assessments as provided in the Declaration and to enjoin and/or seek legal damages from any Owner for violation of such Rules and Regulations;
- (b) To acquire (free and clear of any encumbrances), maintain and otherwise manage all or any part of the Common Properties and all facilities, improvements and landscaping thereon, and all personal property acquired or owned by the Association;
- (c) Unless otherwise provided within this declaration, to dedicate, or gauge or sell all or any personal property acquired or owned by the Association;
- (d) Upon the affirmative vote of 67% of the members of the Association, to dedicate, or gauge or sell all or any part of the Real Property Common Properties and all facilities, improvements and landscaping thereon;
- (e) To execute all declarations of ownership for tax assessment purposes and to pay any and all real and personal property taxes and other charges or assessments levied against the Common Properties, if any, and less the same or separately assessed to all or any of the Owners, in which event such taxes shall be paid by such Owner's;

- (f) To obtain, for the benefit of the common properties, all water, gas and electrical services, refuse collections, landscape maintenance services and other services which in the opinion of the Board shall be necessary or proper;
- (g) To make such dedications and grant such Easements, licenses, franchises and other rights which in its opinion are necessary for street, right of way, utility, sewer, drainage and other similar facilities or video services, cable television services, security services, communication services and other similar services over the Common Properties to serve the properties or any part thereof;
- (h) To contract for and maintain such policy or policies of insurance as may be required by the Declaration or as the Board deems necessary and desirable in furthering the purpose of protecting the interest of the Association and its Members;
- (i) To borrow funds to pay costs of operation secured by assignment or pledge of its rights against delinquent Owners to the extent deemed advisable by the Board of Directors;
- (j) To enter into contracts for legal and accounting services, maintain one or more bank accounts, and generally, to have the powers necessary or incidental to the operation and management of the Association and the Common Properties;
- (k) If, as and when the Board, in its sole discretion, deems necessary it may, but shall not be obligated to, take action to protect or defend the Common Properties or other Properties of the Association from loss or damage by suit or otherwise;
- (l) If, as and when the Board in its sole discretion, deems it necessary it may, but shall not be obligated to, sue in any court of law on behalf of the Association one (1) or more of its Members;
- (m) To establish and maintain a working capital and/or contingency fund in amount to be determined by the Board;
- (n) To establish, make, amend from time to time and enforce compliance with reasonable Rules and Regulations for the operation and use of the Common Properties by any means authorized under the Declaration, Bylaws or Articles of Incorporation which shall include the right to impose reasonable monetary fines;
- (o) To make an unaudited annual report available after each fiscal year to each Owner and any individual or entity holding a mortgage or deed of trust on any Lot;
- (p) To adjust the amounts, collect and use any insurance proceeds to repair damage or replace lost property owned by the Association, and if the proceeds are insufficient to repair damage or replace lost property owned by the Association, to assess the Members proportionate amounts to cover the deficiency;
- (q) To provide services for the benefit of the Members, including but not limited to, security, entertainment, recreation, and education.
- (r) To delegate its powers and duties to Committees, Officers or employees as provided in this Declaration, employee manager or managing agent or other persons and contract with independent contractors or agents who have professional experience to perform all or any part of the duties and responsibilities of the Association, provided that any contract with the person or entity appointed as a manager or managing agent shall be terminable with or without cause on not more than ninety (90) days written notice by the Association and shall have a term of not more than one (1) year with successive one (1) year renewal periods upon the mutual agreement of the parties;
- (s) To cause to be kept a complete record of all of its acts and corporate affairs by keeping minutes of meetings of the members and minutes of meetings of the directors.
- (t) To elect the Officers of the Association;

- (u) To fill vacancies on the Board in accordance with Section 209.00593 of the Texas Property Code;
- (v) Generally, to have any and all powers necessary or incidental to the operation and management of the Association and the Common Properties.
- (w) To adopt and amend Rules regulating the collection of delinquent Assessments and the application of payments;
- (x) To adopt and amend Rules and Regulations for the governing the use and occupancy of Common Areas, Common Properties, and Lots within the Association; and
- (y) To purchase insurance as required by this Declaration.

7.02 **Board Powers.** From and after the date on which the title to the Common Properties has been conveyed to the Association, the Board shall have the exclusive right to contract for all goods, services, and insurance, and the exclusive right and obligations to perform the function of the Board, except as otherwise provided herein.

7.03 **Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

7.04 **Liability Limitations.** No Member, Officer of the Association, or Member of the Board of Directors of the Association shall be personally liable for debts contracted for, or otherwise incurred by the Association, or for the tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its Directors, Officers, agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements, or portion thereof or for failure to repair to maintain the same.

7.05 **Reserve Funds.** The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, Irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the subdivision, and maintaining the subdivision and improvements herein, all as may be more specifically authorized from time to time by the Board of Directors.

ARTICLE VIII INSURANCE

8.01 **Insurance Coverage.** Insurance coverage on the Property shall be governed by the following provisions:

- (a) Purchasing, Policies: Primary Coverage.
 - i. The Association may, but will not be required to, carry property insurance for any damage or destruction of Common Improvements in the Common Areas by fire or other casualty.

The Board or its duly authorized agent shall have the authority to purchase such property insurance and any other insurance policies upon the Common Properties required by this Article for the benefit of the Association and the Owners, as their interest may appear. All policies shall be written with a company licensed to sell insurance in the State of Texas.

- ii. Each Owner may, and is encouraged to obtain, at their expense, (A) property insurance upon the improvements on their Lot and the real property located thereon (including any house on the Lot) and their personal property, and (B) liability insurance against claims asserted against them by other parties, and (C) such other insurance coverages, as the Owner considers appropriate or as required by any mortgagee of the Owner.
 - iii. The Association will not be expected or required to maintain (A) property insurance for damage to the real property, houses, or other improvements or personal property owned individually by the Owners on their Lots, or (B) liability insurance that protects any Owner against liabilities associated with any accident or other occurrence on that Owner's Lot or otherwise.
- (b) Premiums. Premiums for insurance policies maintained by the Association as provided in this Declaration shall be charged to all Owners as part of the Annual Maintenance Assessment.
- (c) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, and exclusive authority to adjust losses under policies maintained by the Association shall be vested in the Board. Insurance proceeds paid under any property insurance maintained by the Association shall be payable solely to the Association for application as required or permitted by this Declaration. Upon the payment of any such proceeds to the Association, the sole duty of the Association shall be to hold and apply the proceeds for the purposes stated herein or in the Bylaws of the Association. Unless otherwise stated in the Bylaws, such property insurance proceeds will be applied as follows:
- i. first, to pay or provide for the expenses incurred by the Association to adjust or recover the proceeds; and.
 - ii. second, the remaining proceeds shall be used to pay or defray the Association's cost of the repairs, reconstruction or replacement of the damaged Common Properties and of obtaining the release or discharge of any asserted mechanic's liens, materialmen's liens or other such liens related to the reconstruction, replacement or repair work.

8.02 Insufficient Proceeds. If property Insurance proceeds are insufficient to repair or replace any loss or damage to Common Properties, the Association may levy a Special Assessment as provided for this Declaration to cover the deficiency. Prior to levying a Special Assessment, the Association shall do all within its power to obtain sufficient proceeds from the property insurance, if any, maintained by the Association to cover the loss or damage.

8.03 Mortgagee Protection. Property insurance maintained by any Owner for any house or other improvements on its Lot may include a mortgagee's or lender's loss payable clause, giving the beneficiary of the clause a right to payment of insurance proceeds in the event of loss or damage to the Owner's house or other improvements by fire or other casualty. However, no mortgagee of or lender to any individual Owner may require that the Association include such a clause in the property insurance, if any, maintained by the Association on the Common Properties.

8.04 Destruction of Landscaping or Improvements on Individual Lots. If a fire or other casualty causes damage to any landscaping or improvements on any Lot (including any house on the Lot), then the Owner of that Lot must proceed with reasonable promptness to either (1) make repairs and replacements as required to restore the landscaping and exterior of the improvements to a safe and sightly condition, or (2) remove the landscaping or damaged improvements from the Lot as required to put the Lot in a safe and sightly condition. If the Owner fails to commence the work required by this section within two (2) months after the date that the damage occurs or in a timely manner, or fails to complete the required work within one (1) year or in a timely manner after the date that the damage occurs, then the Association may clear and remove any and all debris resulting from such damage at the expense of the Owner and assess the costs of such against the Owner as a Special Individual Assessment.

8.05 Association & Owner Responsibilities. The Association will seek to carry commercial general liability (CGL) insurance covering bodily injury (including resulting death) and damage to the property of others occurring (or alleged to occur) in the Common Properties or arising out of negligent acts by employees or authorized representatives of the Association. However, the Association does not assume any responsibility for, or obligation to maintain liability insurance against, claims asserted against individual Owners (or their family members or guests) because of actual or alleged occurrences on the Property.

Each Owner expressly acknowledges and agrees that:

- (a) Neither the Association nor any Officer, Director, and Committee Member will be responsible or liable to any Owner or anyone claiming through the Owner (including any insurance company claiming by subrogation) for any damage or destruction of any house or other improvements or personal property on the Owner's Lot by fire or other casualty.
- (b) If an Owner or anyone claiming through the Owner (including any insurance company claiming by subrogation) asserts a claim against the Association or any Officer, Director, and Committee Member that is contrary to the preceding sentence, the Owner must defend and indemnify the Association or the Officer, Director, and Committee Member (as the case may be) from all costs (including attorneys' fees), losses, or damages that it suffers because of the claim.
- (c) **The provisions of this Section 8.05 are subject to all other provisions of this Second Amended & Restated Declaration, including, but not limited to, provisions related to indemnity, even if the Association or any Officer, Director, and Committee Member is or is alleged to be negligent or strictly liable.**

ARTICLE IX
USE OF COMMON PROPERTIES AND EASEMENT PROPERTY

The Common Properties and Easement Property may be occupied and used as follows:

9.01 **Restricted Actions by Owners.** No Owner shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increase of any insurance carried by the Association. No waste shall be committed in or on the Common Properties.

9.02 **Damage to the Common Properties.** Each Owner shall be liable to the Association for any damage to the Common Properties or Easement Property caused by the negligence or willful misconduct of the Owner or such Owner's family, guests, pets, tenants, or invitees.

9.03 **Rules of the Board.** All Owners and occupants shall abide by any Rules and Regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said Rules and Regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees, incurred by the Association in connection therewith.

ARTICLE X
USE OF PROPERTIES AND LOTS; PROTECTIVE COVENANTS

The Properties and each Lot situated thereon shall be constructed, developed, reconstructed, repaired, occupied, and used as follows:

10.01 **Restricted Use.** Use of the Common Properties shall be limited to Members, their families, long term tenants, and guests. No person or entity shall use any portion of the Common Properties to: (i) solicit, promote, or conduct business, religious, political, or propaganda matters; or (ii) distribute hand bills, newsletters, flyers, circulars, or other printed materials without the prior written consent of the Association (which consent may be withheld in its sole and absolute discretion).

10.02 **Residential Purposes.** The use of a Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using a dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the Dwelling as a Residence; (2) the uses conform to applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the lot by employees or the public in quantities that materially increase the number of vehicles parked on the street; (5) the uses do not interfere with residents use and enjoyment of neighboring Lots; and (6) the use is in compliance with other provisions of this declaration, including regulation of leasing of properties and prohibition on short term leasing of properties.

10.03 **Building Materials.** The total exterior wall area of the main residential structure on a lot shall not be less than seventy-five percent (75%) brick, brick veneer, stone, stone veneer, masonry or other material approved by the ACC. Roofing shall be constructed of wood, slate, clay tile, metal, or composition material of a minimum weight of 240 pounds per 1,000 square feet of roofing specifically approved by the ACC in writing prior to installation. Roof pitch shall be a minimum of 8/12, unless approved otherwise by the ACC. Installation of all types of exterior items and surfaces such as address numbers or external paint or stain shall be subject to the prior approval of the ACC as to design, materials, and location.

Owners may not install solar energy devices, including solar panels, on the exterior of their lot or dwelling without prior written approval of the ACC. All solar energy devices must comply with the requirements as set forth within Section 202.010 of the Texas Property Code.

10.04 Minimum Floor Space. Floor areas referenced below are for air-conditioned floor areas, exclusive of porches, garages, patios, terraces, or breezeways attached to the main dwelling. The main living area of each residential structure shall have a minimum living area of 1,500 square feet for a one-story residence and 2,000 square feet for a two-story residence.

10.05 Building Setback Requirements. All front, side, and rear setbacks must be approved by the Architectural Control Committee, and must meet the requirements of Collin County, Texas, the City of Allen, and the requirements of the Plat provided. Unless otherwise approved by the ACC, no structure may be erected nearer than fifteen feet to the property line adjacent to the street in front of or alongside the lot, nor nearer than five feet to any other side property line. The location of the main residence on each Lot and the facing of the main elevation with respect to the street shall be subject to the written approval of the Architectural Control Committee. No building or structure of any type shall be erected on any Lot nearer to the property lines indicated by the minimum building setback line on the Plat. All structures currently existing at the time these restrictive covenants go into effect shall be considered grandfathered and not in violation of this provision. The members of the Association may approve a variance to these setback requirements by affirmative vote of 51% of the members of the Association.

10.06 Height. No building or structure on any Lot shall contain more than two (2) stories or exceed, in height, the maximum height allowed by the City of Allen, such height to be measured and determined in accordance with the method approved by the City of Allen.

10.07 Driveways & Carports. Each Lot must be accessible to the adjoining street or rear alley by a driveway suitable for such purposes and approved in writing as to design, materials, and location by the Architectural Control Committee before the residential structure located on such Lot may be occupied or used.

Carports may only be constructed within the rear of a property and may not be visible from the front street. Any carport constructed in the rear of a property must be behind a board on board fence. No carport may be constructed within the front of a lot. All carports must match the aesthetic of the dwelling located upon the lot.

10.08 Access. No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot except as expressly provided on the Plat, or otherwise approved in writing by the Architectural Control Committee.

10.09 Drainage. The Association shall not be held liable for any loss of, use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, walls, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters. After the residence to be constructed on a Lot has been substantially completed, the Lot will be graded so that surface water will flow to streets, alleys, drainage easements, or other Common Properties, and in conformity with the general drainage plans for the subdivision. No dams shall be constructed nor any other alteration or change be made in the course or flow of any waterway or drainage course crossing or abutting any Lot without the prior written consent of the Architectural Control Committee. All drainage and grading, including existing and proposed grades must be indicated on the site plan and should be

designed to contain drainage within Lot boundaries or designated drainage easements. The proper drainage of the Lot is the responsibility of the respective Lot Owner's builder ("Builder").

10.10 Erosion Control. During the Construction of improvements on the Lots and prior to the landscaping of such Lots, Lot Owner will take responsibility to prevent excessive erosion of Lots, causing silt to be deposited in streets and in the storm drains. Builder shall maintain silt fences until landscaping has been complete

10.11 Utilities. Each residence situated on a Lot shall be connected to utilities as soon as practicable after same are available at the Lot line.

10.12 Building Permits. The Building Inspector of Collin County, Texas or other municipal authority, is hereby authorized and empowered to revoke, as the case may be, any and all permits for construction of improvements of any kind or character to be erected on any Lot, if such improvements do not meet the requirements as set forth by Collin County or the restrictive covenants as set forth herein.

10.13 Landscaping and Sprinkler System. Yards of Lots shall be sodded or otherwise planted by the Owner thereof with grass or another ground cover or plantings as approved by the Architectural Control Committee and maintained in a clean and attractive manner free of dust and weeds. Drought Resistant Xeriscaping in accordance with Section 202.007 of the Texas Property Code is allowed. Hydromulch is not permitted. All areas visible from the street fronting a Lot shall be attractively landscaped approved by the Architectural Control Committee. Plans for installation of a water irrigation system are not subject to prior written approval of the Architectural Control Committee. The ACC may promulgate standards for Landscaping which may includes the types of trees, their number, and location, as well as the number, size, and types of shrubs and other such landscaping and plantings. These ACC Landscaping Standards are subject to alteration and prior written approval of the Architectural Control Committee.

10.14 Fences. No fence, wall, or hedge shall be erected, placed, or altered on any Lot without the prior written approval of the Architectural Control Committee and the design of and materials used in the construction of fences shall be subject to the prior written approval of the Architectural Control Committee. No fence, wall, or hedge may exceed the maximum height as allowed by local municipal ordinance. No fence, wall, or hedge shall be erected, placed, or altered on any Lot nearer to any street than the minimum building setback line indicated on the Plat, unless otherwise permitted by the Architectural Control Committee and in accordance with the requirements of Collin County, Texas. No wire or woven fence shall be permitted on any part of a Lot. All such structures must comply with all applicable laws and building codes, including, but not limited to, the International Building Code (IBC).

No wire or woven fence shall be permitted on any part of a Lot. All service and sanitation facilities, clothes lines, wood piles, tool sheds, and air conditioning equipment must be enclosed within fences, walls, and/or landscaping as not to be visible from the adjoining Lots, Common Areas or residential streets. Upon submission of written request, the Architectural Control Committee may, from time to time, at its sole discretion, permit Owners to construct fences or walls which are in variance with the provisions of this paragraph where, in the opinion on the Architectural Control Committee, the fence or wall is an integral part of the home. Fencing shall be constructed in accordance with the following Restrictions base on the location of such fencing.

10.15 Trash Receptacles and Collection. Each Lot Owner shall make or cause to be made appropriate arrangements with the City or other local trash service, for collection and removal of garbage and trash on a regular basis. Each and every Owner shall observe and comply with any and all Regulations or

requirements promulgated by the City and/or the Association, in connection with the storage and removal of trash and garbage. All trash, garbage, or waste matter shall be kept in tightly sealed bags or other approved containers that shall be maintained in a clean and sanitary condition. An Owner with an alley may not allow for trash, garbage containers and other waste material to be visible from the street in the front of a residence. An Owner without an alley may allow for trash, garbage containers and other waste material to be visible from the street in the front of a residence for up to 24 hours before and after trash pickup days. No Lot shall be used for open storage of any materials whatsoever, except that building materials to be used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon through completion of construction. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

10.16 Exterior Lighting. No exterior light, including landscape lighting, shall be installed or maintained on any Lot without the prior written approval of the Architectural Control Committee. Further, and notwithstanding such prior written approval, upon being given notice by the Architectural Control Committee that any exterior light is objectionable, the Owner of the Lot on which same is located will immediately remove said light or shield the same in such a way that it is no longer objectionable. Owners may install holiday lights without seeking approval of the ACC.

10.17 Antenna & Satellite Dishes. The erection, construction, placement or installation of any television, radio or other electronic tower, serial, antennae, satellite dish or device of any type for the reception or transmission of radio or television broadcast signals or other means of communication upon a Lot or upon any improvement thereon is prohibited, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The ACC shall be empowered to adopt Rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. All dishes must be installed in compliance with all state and local laws and regulations, including zoning, land-use, and building regulations. All dishes must be maintained and kept in good condition. Unsightly, rusted, and damaged satellite dishes must be replaced.

10.18 Temporary Structures and Vehicles.

- a) Temporary Structures: No temporary structure of any kind shall be erected or placed upon any Lot. No house, home trailer, mobile home, modular or prefabricated home, tent, shack, barn, or any other structure or building other than the residence to be built thereon, shall be stored on any Lot, either temporarily or permanently, and no residence, house, garage, or other structure appurtenant thereto shall be moved upon any Lot from another location.
- b) Temporary Vehicles: Owners shall ensure that campers, motor homes, recreational vehicles, boats, buses, trailers (of any kind), motorcycles, camper, or any motorized vehicles (other than a conventional passenger vehicle), (collectively, Temporary Vehicles) are stored, placed, or parked on an Owner's property. Notwithstanding the foregoing, no Temporary Vehicle is allowed to remain on an Owner's property if in disrepair or poor condition. Temporary Vehicles may be parked on the street for no more than fourteen days per calendar month and must also adhere to the requirements in 10.18(d) below. There is no limitation on the parking of temporary vehicles in the rear driveway of a residence.
- c) Commercial Vehicles and Large Vehicles: Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways, or otherwise within the Property. No vehicle of any size which transports inflammatory or explosive cargo may be parked or

stored within the Property at any time. Vehicles must be parked in the rear of a residence and garages to the maximum extent possible.

- d) Misc. Parking & Traffic Provisions: Any truck, bus, boat, boat trailer, trailer, mobile home, camp mobile, camper, motorcycle, or any motorized vehicle other than a conventional automobile shall be stored placed, or parked within the garage of the appropriate Owner or so as to be completely hidden from view to the maximum extent possible. Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways, or otherwise within the Property. No vehicle of any size which transports inflammatory or explosive cargo may be parked or stored within the Property at any time. Vehicles must be parked in garages to the maximum extent possible.

10.19 Signs & Flags. No signs shall be displayed to the public view on any Lot with the exception of signs promoting the sale of a particular Lot or construction signs. Signs must be of customary dimensions (2' x 3' maximum). Construction signs may not remain on a lot longer than 30 days. Notwithstanding anything herein contained to the contrary, and all signs, if allocated, shall comply with all sign standards of Collin County, Texas, Texas, as such standards may be applicable to the Properties.

Political signs are allowed for so long as they meet all requirements of Section 259.002 of the Texas Election Code.

Flags of the United States, Texas, or United States Military may be displayed in accordance with applicable Texas law. Flags celebrating a sports team are allowed.

Signs celebrating the birth or birthday of an occupant are allowed for so long as they are removed within ten days of their installation.

The board of directors or ACC may promulgate standards and rules for Signs and Flags.

10.20 Utility Services. All services to the home including pre-wiring cable TV must be installed underground. Surface mounted mechanical must be screened from view and grouped together away from street/public view. All streets, alleys, and Easements shown on the recorded Plat of the Property have been reserved for the purposes indicated. With respect to these Easement areas, as well as any other areas described within recorded Easement Documents, or in the Common Properties, any and all bona fide public utility service companies shall have the right of access, ingress, egress, regress, and use of the surface estate and necessary underground area for the installation and maintenance of utility facilities.

Except as to any special street lighting or other areas facilities that may be required by law or by the franchise of any utility company, no area utility facilities of any type (except meters, risers, service pedestals, and other service installations necessary to maintain and operate appropriate facilities) shall be erected or installed within the Property, whether upon Lots, easements, streets, or right-of way of any type, either by the utility company or any other person or entity, (including, but not limited to any person owning or acquiring any part of the Property) and all utility service facilities (including, but not limited to water, sewer, gas, electricity, and telephone) shall be buried underground, under recreational easements, Common Properties, streets, or utility easement areas for the purpose of serving any structure located on any part of the Property.

10.21 Drilling and Mining Operations. No portion of the Property covered by this Declaration may be used for any purpose incident to exploring for, developing, drilling for, producing, transporting, mining, treating, or storing the oil, gas, and other minerals in, on, and under the subject Property. Nothing herein

contained shall ever be construed to prevent the holder of the oil, gas, and other minerals rights in and under the Property from developing or producing the oil, gas, and other minerals in and under the subject Property by pooling or by directional drilling under the subject Property from well sites located on tracts outside the subject Property.

10.22 **Offensive Activities.**

- (a) No noxious or offensive activity shall be carried out upon the Properties or any part thereof, nor shall anything be done or maintained thereon which may disturb the neighborhood or occupants or adjoining property, or detract from its value as an attractive residential community. Any illegal activity shall be considered to be a noxious or offensive activity for purposes of this Section. The Board of Directors shall have the exclusive authority to determine, in its sole discretion, which may constitute a nuisance or offensive activity. Without limitation, no horns, bells, or other sound devices, excluding security devices, shall be used or placed on the exterior of the Property. Exterior mounted speakers must have prior ACC approval. Pets shall not be permitted to run at large, but shall be kept under control by Owners, or guest of the Owners, by leash, cord, or chain. Habitually barking, howling, or yelping pets shall be deemed a nuisance. The Board of Directors shall have the exclusive authority to determine, in its sole and absolute discretion, if a particular animal, bird, or pet is creating a nuisance.
- (b) The owner of each lot within the subdivision shall keep the lot neatly mowed at all times, and shall not allow rubbish, trash, or other unsightly articles to accumulate on the lot or in any common area, alley, easement, or street adjacent to the lot. The Association, after first notifying an owner and giving them an opportunity to cure the violation, shall have the right and responsibility to have any lot not properly maintained cleaned to comply with this paragraph, and any reasonable expenses so incurred shall be charged to the owner of the lot, and such charge shall become a lien against the lot if unpaid.
- (c) No noxious or offensive activity shall be carried on upon the Property or any part thereof which may be or may become an annoyance or nuisance to some other owner.
- (d) No exterior lighting of any sort shall be installed on any lot within the subdivision where such light source is offensive or a nuisance to neighboring owners. Any outside lighting that is, may be, or may become an annoyance or nuisance to some other owner, shall be turned off no later than 10 PM unless prior notice has been given to lot owners of the subdivision. The Board of Directors shall have sole discretion to determine whether exterior lighting is a nuisance.
- (e) No exterior speakers, horns, whistles, bells or other sound generating devices which are offensive or a nuisance to neighboring owners of subdivision lots shall be placed or used within the subdivision except security devices used exclusively to protect the improvements erected upon a subdivision lot. No excessive noise/construction including loud music which is offensive or a nuisance to owners of subdivision lots shall commence prior to 7 AM or after 10 PM unless prior notice has been given to lot owners of the subdivision.
- (f) No outside toilets or privies will be permitted on any lot in the subdivision, except for temporary construction facilities. All toilet facilities, sinks, lavatories, washing machines, drains, etc. shall be connected to a sewage collection system meeting the approval of all

appropriate health authorities and complying with the appropriate governmental regulations and laws.

- (g) No stables, pens, barns, kennels, or other accommodations for livestock shall be permitted on any lot within the subdivision, nor shall any livestock be kept or maintained on any lot within the subdivision. Chickens may be kept within a roost located within the rear of a Lot that is not visible from the front street. No roosters may be kept within the Property. A maximum of four chickens may be kept per Lot, unless a greater number is allowed by Texas statute or municipal ordinance. No pigs, pot belly pigs, hogs, or barnyard animals are allowed within the Property.
- (h) No Vehicle may exceed 35 miles per hour on Lake Travis Drive. No Vehicle may exceed 30 miles per hour on any other street within the community.

10.23 **Duty of Maintenance.**

- (a) Unless otherwise noted within this Declaration, Owners and occupants (including lessees) of any Lot shall, jointly and severally, have the duty and responsibility, at their sole cost and expense, to keep the Lot so owned or occupied, including buildings, improvements, grounds, or drainage easements or other right-of-way incident thereto, and vacant land, in a well maintained, safe, clean, and attractive condition at all times. Such maintenance includes but it not limited to, the following:
 - (i) Prompt removal of all litter, trash, refuse, and waste;
 - (ii) Lawn mowing on a regular basis;
 - (iii) Tree and shrub pruning;
 - (iv) Watering landscaped areas;
 - (v) Keeping exterior lighting and maintenance facilities in working order;
 - (vi) Keeping lawn and garden areas alive, free of weeds, and attractive;
 - (vii) Keeping parking areas, driveways, and curbs in good repair;
 - (viii) Complying with government health and police requirements;
 - (ix) Repair of exterior damages to improvements;
 - (x) Cleaning of landscaped areas lying between street curbs and Lot lines, unless such streets or landscaped areas are expressly designated to be Common Properties or Easement Property maintained by applicable governmental authorities or the Association; and
 - (xi) Repainting of improvements.

- (xii) Repair of damaged fences, including leaning fence posts and sections, in a timely manner.
- (b) If, in the opinion of the Association, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the repairs and maintenance or make arrangements with the Association for making the repairs and maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such repair and maintenance without any liability for damages for wrongful entry, trespass, or otherwise to any person.
- (c) Notwithstanding the provisions of the Section above, if, at any time, an Owner shall fail to control weeds, grass, and/or other unsightly growth, the Association shall have the authority and right to go onto the Lot of such Owner for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a sum up to two (2) times the actual cost to the Association thereof. The Association may charge the owner for mowing and cleaning said Lot as well as for security associated with such entry. If, at any time, weeds or other unsightly growth on the Lot exceed ten inches (10") in height, the Association shall have the right and authority to mow and clean the Lot, as aforesaid.
- (d) The Owners and occupants (including lessees) of any Lot on which work is performed pursuant to this section shall, jointly and severally, be liable for the cost of such work (such costs constituting a Special Individual Assessment) and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of said persons, jointly and severally, and shall constitute a lien against that portion of the Properties on which said work was performed. Such lien shall have the same attributes as the lien for Assessments and Special Assessments set forth in this Declaration, and the Association shall have the identical powers and rights in all respects, including but not limited to the right of foreclosure.

10.24 Animals. No animals, or livestock of any kinds shall be raised, bred, or kept on any part of the Properties, except that not more than eight (8) dogs, cats, indoor birds, chickens, hamsters, guinea pigs, or other household pets in the may be kept on any Lot, and then only if they are kept, bred, or raised solely as domestic pets and not for commercial purposes. Such pets must be kept within the private fenced yard of the Owner. No horses or barnyard animals shall be kept on the Property. Pets shall not be permitted to run at large, but shall be kept under the control of Owner, or guests of the Owners, by leash, cord, or chain. Each owner is responsible for cleaning up after their pet should they defecate upon any open area of the Property. An owner may keep bees upon their property for so long as they do not interfere with the quiet enjoyment of neighboring owners.

10.25 Window Coolers. No window or wall type air conditioners or water coolers shall be permitted to be used, erected, placed, or maintained if visible from the front or side residential street. Otherwise, window and wall type air conditioners are allowed for so long as they are not visible from the front or side residential street.

10.26 **Sheds & Outbuildings.** No shed or outbuilding may be installed without prior approval from the ACC. No outbuilding or shed may be greater than 12 feet by 16 feet in width. No shed or outbuilding may be greater than 10 ½ feet in height.

ARTICLE XI
ARCHITECTURAL CONTROL COMMITTEE

11.01 **Purpose.** Because the Lots within the Association are part of a single, unified community, the Association has the right to regulate the design, use, and appearance of the Lots and common areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements.

11.02 **Architectural Control Committee.** The Architectural Control Committee (the "ACC") consists of 3 persons appointed by the board, pursuant to the Bylaws and Section 209.00505 of the Texas Property Code. For purposes of this Section, the Architectural Control Committee shall have the same meaning as "Architectural Review Authority" as referenced under Section 209.00505. The board of directors may affirm, modify, or reverse, in whole or in part, any decision of the Architectural Control Committee.

11.03 **Limits on Liability.** The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The Members of the ACC have no liability for the ACCs decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the ACC, (2) supervising construction for the Owner's compliance with approved plans and specifications, or (3) the compliance of the Owner's plans and specifications with city codes and ordinances, state and federal laws.

**BEFORE MAKING ANY IMPROVEMENT OR ALTERATION
TO A LOT OR DWELLING, A BUILDER OR OWNER
MUST APPLY FOR THE ACC'S PRIOR WRITTEN APPROVAL.**

11.04 **Prohibition on Construction, Alteration & Improvement.** Without the ACCs prior written approval, a person may not construct a Dwelling or make an exterior addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, fence or wall. The ACC has the right but not the duty to evaluate every aspect of exterior construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. An owner shall not be required to seek ACC approval if that owner is solely making changes to the interior of their dwelling and the changes are not visible from the exterior of the dwelling.

11.05 **ACC Approval.** No building, structure, fence, wall, or improvement of any kind or nature shall be erected, constructed, placed, altered, changed, or modified on any Lot until the plot plan showing the location of such building, structure, paving, or improvement, construction plans and specifications thereof and landscaping and grading plans therefore have been submitted to and approved in writing by the

Committee as to: (i) location with respect to Lot lines; topography, finished grades elevation; effect of location, and use on neighboring Lots and improvements situated thereon; and any drainage arrangement, (ii) conformity and harmony of external design, color, texture, type, and appearance of exterior surfaces and landscaping with existing structures and existing landscaping, (iii) quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets; and (iv) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth in bulletins promulgated by the Committee.

11.06 Samples. The ACC is authorized to request the submission of samples of proposed construction materials or colors or proposed exterior surfaces.

11.07 Final Approval. Final Plans and specifications shall be submitted to the ACC for approval or disapproval. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the Committee shall send written confirmation of approval to the Owner, if found not to be in compliance with this Declaration, one set of such plans and specifications shall be returned marked "Disapproved," accompanied by a reasonable statement of items found not to comply with this Declaration.

11.08 Prompt Completion of Modification. Any modification requests under this Article XI must be completed promptly by the Owner. All architectural modifications must be completed within two years or less after approval has been received from the Architectural Control Committee.

11.09 Modification of Plans After Approval. Any modification or change to the approved set of plans must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval as required herein shall be in writing.

11.10 Scope of Authority of Committee. The Committee is authorized and empowered to consider and review any and all aspects of exterior Dwelling construction, construction of other improvements and location, quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Owners, or the general value of the Properties. As an example, and not by way of limitation, the Committee may impose limits upon the location of window areas on residential Dwelling which would overlook the enclosed patio area of an adjacent residential Dwelling. Also, the Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods, or materials may or may not be permitted, in accordance with the reasonable opinion of the Committee. The Committee may, from time to time, publish and promulgate architectural standard bulletins which shall be fair, reasonable, and uniformly applied and shall carry forward the spirit and intention of this Declaration. Such bulletins shall supplement this Declaration and are incorporated herein by reference. The Committee shall have the authority to make final decisions in interpreting the general intent, effect, and purpose of this Declaration. The Committee shall have no authority over Common Properties.

11.10 Deemed Denial. If the Committee or its designated representative fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted, then Committee denial shall be presumed; provided, however, that nothing in this paragraph shall affect in any way the method for seeking or granting variances, as described in this Section of the Declaration, nor shall any failure of the Committee to act on a variance request within any particular period of time constitute the granting or approval of any such variance request.

11.11 Building Permit. If the application is for work that requires a building permit from the City, the ACC's approval is conditioned on the City's issuance of the appropriate permit. The ACC's approval of plans and

specifications does not mean that they comply with the City's requirements. Alternatively, approval by the City does not ensure ACC approval.

11.12 No Approval Required. No approval is required to repaint exteriors in accordance with an ACC-approved color scheme, or to rebuild a Dwelling in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a Dwelling.

11.13 Prior Approval. Notwithstanding anything to the contrary in this Declaration, any improvement to the Property previously approved by the Association, and conducted by the owner, that Architectural Request is deemed to have been approved by the ACC in perpetuity.

11.14 ACC Guidelines. The Association may publish architectural Restrictions, guidelines, and standards developed by the ACC, subject to revision from time to time, including revisions to reflect changes in technology, style, and taste. The Association, acting through the ACC, has the right to establish and enforce architectural Restrictions, guidelines, and standards relating to every aspect of proposed or existing improvements on a Lot, including but not limited to Dwellings, fences, and landscaping, and further including replacements or modifications of original construction or installation.

11.15 Construction Restrictions. Without the ACC's prior written approval for a variance, improvements constructed on every Lot must have the characteristics described in the Application submitted to and approved by the ACC. The ACC and the board may promulgate additional Rules and Restrictions, as well as interpretations, additions, and specifications of the Restrictions contained in this Article. An Owner should review the Association's architectural Restrictions, if any, before planning improvements, repairs, or replacements to his Lot and Dwelling.

11.15 Variances. Upon submission of a written request for same, the Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install improvements which are in variance from the architectural standards, the Declaration, or the previously published architectural bulletins which are provided in this Declaration or which may be promulgated in the future. In any case, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community; provided, however, in no event shall any such variance reduce required floor area by more than ten percent (10%). No Member of the Committee shall be liable to an Owner or other person claiming by, through, or on behalf of any Owner, for any claims, causes of action, or damages arising out of the granting or denial of, or other action or failure to act upon, any variance requested by an Owner or any person acting for or on behalf of any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce the Declaration, architectural standards or published architectural bulletins provided hereunder against any other Owner. Each such written request must identify and set forth in detail the specific restriction or standard from which a variance by the Committee must be in writing and must identify in narrative detail both the standards from which a variance is being sought and the specific variances being granted.

11.16 Nonconforming and Unapproved Improvements. The Association may require any Owner to restore such Owner's improvements to the condition existing prior to the construction thereof (including without limitation, the demolition, and removal of any unapproved improvement) if such improvements were commenced or constructed in violation of this Declaration. In addition, the Association may, but has no obligation to do so, cause such restoration, demolition, and removal and levy the amount of the cost

thereof as a Special Individual Assessment against the Lot upon which such improvements were commenced or constructed.

11.17 **Liability.** Neither the Association, the Committee, the Board, nor the officers, directors, Members, employees, and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for, approval, or to any Owner by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against the Association, the Committee, the Board, or the officers, directors, Members, employees, or agents of any of them, to recover any such damages and hereby releases and quit claims all claims, demands, and causes of action arising out of or in connection with any Judgment, negligence, or non-feasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given. Plans and specifications are not approved for engineering or structural design or adequacy of materials, and by approving such plans and specifications neither the Committee, the Members of the Committee, the Declarant nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications.

11.18 **Adjacent Lots.** Owners may combine adjacent lots in accordance with Section 209.015 of the Texas Property Code. ACC approval must be obtained prior to the combination of adjacent lots.

ARTICLE XII **EASEMENTS**

12.01 **Ingress and Egress by the Association.** The Association shall, at all times, have full rights of ingress and egress over and upon each Lot for the maintenance and repair of each Lot, Easement Property, and the Common Properties in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties, and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused by the Association's entry, other than damages caused by the Owner, shall be repaired by the Association at the expense of the Association.

12.02 **General.** The rights and duties of the Owners with respect to sanitary sewer, water, electricity, natural gas, telephone and cable television lines, and drainage facilities shall be governed by the following:

- (a) Wherever (i) sanitary sewer or water service connections, (ii) natural gas, electricity, telephone or cable television lines, or (iii) drainage facilities are installed within the Properties, which connections, lines, or facilities or any portion thereof lie in or upon Lots owned by any party other than the Owner of a Lot served by said connections, lines, or facilities, such Owners of Lots served shall have the right and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots within or upon which said connections, lines, or facilities or any portion thereof lie to repair, replace, and generally maintain said connections, lines, or facilities as and when the same way be necessary.
- (b) Wherever (i) sanitary sewer or water service connections, (ii) natural gas, electricity, telephone or cable television lines, or (iii) drainage facilities are installed within the Properties, which connections, lines, or facilities serve more than one Lot, the Owner of each Lot served by said connections, lines, or facilities shall be entitled to the full use and

enjoyment of such portions of said connections, lines, or facilities which service such Owner's Lot.

12.03 Reservation of Easements. Easements over the Lots and Common Properties for the installation and maintenance of electric, telephone, cable television, water, gas, and sanitary sewer lines and drainage facilities are hereby reserved by the Association, together with the right to grant and transfer same.

12.04 Surface Areas of Utility Easements. Easements for installation and maintenance of utilities are reserved as shown and provided for on the Plat. Underground electric, storm sewer, sanitary sewer, water, natural gas, and telephone service shall be available to all Lots in the subdivision. Easements for the underground service may be crossed by driveways, walkways, patios, walls, and fences, provided the Builder makes prior arrangements with the utility companies furnishing electric, storm sewer, sanitary sewer, water, natural gas, and telephone service and provides and installs any necessary conduit of approved type and size under such driveways, walkways, patios, or fences prior to construction thereof. Such easements for the underground service shall be kept clear of all other improvements, and neither the grantee nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants, to shrubbery, trees, flowers, or other walkways, patios, or fences (provided conduit has been installed as outlines above) of the Owner located on the Lot covered by said easements. In addition, the utility easements shall not be used in alleyways.

12.05 Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance, and other emergency vehicles and other service vehicles to enter upon the Common Properties, including, but not limited to, private lots, in the performance of their duties, and further, and easement is hereby granted to the Association, its officers, directors, agents, employees, and management personnel to enter the Common Properties to render any service.

12.06 Universal Easement. The Owner of each Lot is hereby granted an easement not to exceed one (1) foot in width over all adjoining Lots and Common Properties for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachment, settling, or shifting provided, however, that in no extent shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to willful misconduct of said Owner or Owners.

ARTICLE XIII **GENERAL PROVISIONS**

13.01 Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or any Owner, their respective legal representatives, heirs, successors, and assigns, in perpetuity. The Association and these covenants may be terminated by an instrument signed by the Members entitled to cast eighty five percent (85%) of the votes of the Association and subsequently recorded in the Office of the County Clerk of Collin County, Texas, agreeing to abolish or terminate these Covenants and Restrictions; provided, however, that no such agreements to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

13.02 Amendments. This Declaration may be amended or changed upon the express written consent of at least a majority of the outstanding votes of all Members of the Association.

13.03 **Enforcement.** Enforcement of this Declaration shall be by any proceeding law or in equity against any person or persons violating or attempting to violate them, or to recover damages, or to violate them, or to recover damages, or to enforce any lien created by this Declaration; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Fines for violation of this declaration are set forth within this Declaration.

13.04 **Headings.** The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

13.05 **Notices to Member/Owner.** Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

13.06 **Disputes.** Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or by Bylaws of the Association shall be determined by the Board of Directors, whose determination shall be final and binding upon all Owners.

ARTICLE XIV **RENTAL PROPERTIES**

14.01 **Prohibition on Rentals for Less than 6 Months.** No Owner may Lease their Property for a term of less than six (6) consecutive months; provided, however, a Lease converting to a month-to-month term after a six (6) consecutive month term is permitted as long as such carry over to a month-to-month term does not exceed twelve (12) months in the aggregate (i.e., the Lease shall need to be renewed for at least six (6) months after a maximum of twelve (12) months of carry over on a month-to-month basis). Daily, weekend, weekly and monthly rentals less than six (6) consecutive months are prohibited. No subleasing is allowed. An owner that violates this restrictive covenant shall be subject to a fine of \$200.00 for each day of the violation.

“Lease” or “Leasing” is defined as the occupancy or use of the Property for any period of time by any person other than the Owner for which the Owner, or any designee of the Owner receives any direct or indirect monetary or non-monetary consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument, including, but not limited to, any subleases or assignment of a Lease. If the Property is owned by a trust and the beneficiary of the trust is living in the Property, that Property shall be considered Owner-occupied rather than leased. Lease to Purchase Agreements & Contracts for Deeds and similar agreements shall be considered the same as Leasing for purposes of this Instrument. Housesitting shall be considered Leasing for purposes of this policy.

14.02 **Prohibition on Rentals to Sex Offenders or Felons.** No Owner may Lease their Property to a Tenant or occupant that is a Registered Sex Offender or who has been convicted of a felony in any jurisdiction in the United States. For purposes of this provision, a “Registered Sex Offender” is a (y) person who is registered as a Level 3 (High Risk) or Level 2 (Moderate Risk) sex offender pursuant to Chapter 62 of the Texas Code of Criminal Procedure (Sex Offender Registration Program as it now exists or as it may be amended in the future), or pursuant to any other law of the State of Texas, or any local municipal or county ordinance, or pursuant to any other state or federal law or regulation and (z) person who is required to register as a sex offender and who is required to have a risk assessment but who has not been

assigned a risk assessment level by the applicable authority or for whom such a risk assessment level is not yet available to the public via the applicable registry program. An owner that violates this restrictive covenant shall be subject to a fine of \$200.00 for each day of the violation.

14.03 Prohibition on Rental of Less than 100% of the Property. If a property is leased, 100% of the property must be leased. No owner may lease out a garage apartment, bedroom, or less than 100% of their property. If a property is leased, it must be leased in full.

14.04 Registration of Rental Properties & Tenant Information. All rental properties must be registered with the Association. Every owner that leases their property must provide the Association with the following information:

- a) Contact information, including the name, mailing address, phone number, and email address of each person over the age of 18 who will reside at the property.
- b) Contact information, including the mailing address, phone number, and email address for the owner and any offsite property manager.
- c) Certification that the manager or owner conducted a background check for every adult tenant who will reside within the property and that no adult tenant is a registered sex offender or felon.

14.05 Rental Cap. No more than fifteen percent (15%) of the properties within the Association may be rented at one time. This cap is subject to the ability of the Board of Directors to grant a hardship exception for any owner experience extenuating circumstances. An owner that violates this restrictive covenant shall be subject to a fine of \$100.00 for each day of the violation.

14.06 Owners Currently Leasing. All owners currently leasing their property within the Association are subject to all restrictive covenants contained within the declaration.

ARTICLE XV **RECORD PRODUCTION & COPYING POLICY**

15.01 Record Production & Copying Policy. All books, records, and financial records shall be open to and reasonably available for examination by an owner within the community or by the owner's designated agent except for those outlined in Paragraph 6 below. An owner or their agent is also entitled to copies of said records. Should an owner designate an agent for inspection of records, such designation must be made in writing and submitted to the Association prior to any inspection or production of any records.

A Records Request must be submitted to the Association in writing, via Certified Mail, Return Receipt Requested to the mailing address of the Association or authorized representative as reflected in this Declaration. The owner's request must describe in sufficient detail the records requested and specify whether the owner is requesting to inspect the records or is requesting copies.

The Association shall reply to such a Records Request by an owner within 10 business days of the receipt of the request. If the Association is unable to produce the records within 10 business days, the Association shall inform the owner of such within 10 business days of the receipt of the owner's request and inform the owner that the information will be available not later than 15 business days from the date of the response to the owner's Records Request.

- (a) Inspection Requested: Should the owner submitting the request seek to inspect documents, the Association shall reply with the dates and times during normal business hours that records will be available for inspection as well as the costs the Association will charge for the inspection of said records. If the Association is unable to produce the records within 10 business days, the Association shall inform the owner of such within 10 business days of the receipt of the owner's request and inform the owner that the information will be available not later than 15 business days from the date of the response to the owner's Records Request.
- (b) Copies Requested: Should the owner submitting the request seek the production of copies of Association records, the Association shall produce all requested records that are within their possession or control within ten business days. If the Association is unable to produce the records within 10 business days, the Association shall inform the owner of such within 10 business days of the receipt of the owner's request and inform the owner that the information will be available not later than 15 business days from the date of the response to the owner's Records Request.

Records may be produced in hard copy, electronic format, or any other format that is reasonably available to the Association.

The Association shall require the advance payment of estimated costs of compilation and production of records. The Association shall charge the costs outlined under Title 1, Rule 70.3 of the Texas Administrative Code. Once an owner has inspected or received copies under the Records Request, a Final Invoice shall be delivered to the owner within 30 days of the records production. If the owner does not pay the final amount showing on the invoice within 30 days, then the amount on the invoice shall be added to the owner's account as an assessment. An owner may not be foreclosed upon for non-payment of this balance due. If a refund is due to the owner after a Records Request, then the refund shall be sent along within the Final Invoice.

The following records shall be unavailable for copying or inspection without written approval of the owner, or a court order stating that such records must be released:

- (a) Attorney files and records;
- (b) Personal information of owners;
- (c) Violation history of owners;
- (d) Personal financial information of an owner;
- (e) Records of payment or non-payment of an owner;
- (f) Association Employee Information;
- (g) Contact information of an owner.

ARTICLE XVI **PAYMENT PLAN POLICY**

16.01 Payment Plan Policy. An owner shall have the opportunity to submit a payment plan request to the board of directors. Such payment plan request must be made in writing and may be transmitted via email to the Association's Managing Agent or to the Association's Attorney. All payment plans submitted must be 12 months or less in length, beginning at the date of the initial request for the payment plan, and pay the entire balance owed by the owner submitting such a plan, including any additional assessments, administrative fees, and interest that accrue during the pendency of the plan.

Should the payment plan request meet the requirements as set forth above, the owner shall be notified that the board has agreed to his payment plan. A Payment Plan Agreement shall be submitted to the owner in writing.

Administrative fees and interest shall be charged against the owner's account during the pendency of the payment plan.

Payment Plan payments shall be submitted to the Association, its Managing Agent, or the Association's attorney and shall be due upon the first of the month, unless otherwise specified within the owner's payment plan.

Payments under a payment plan must be received within three business days of their due date as specified in the Payment Plan Agreement or said agreement shall be considered in default. Should an owner default under said payment plan, subsequent payments by the owner shall no longer be applied according Texas Property Code Section 209.0063 but shall be applied in the following order: 1) Attorney's fees; 2) Interest; 3) Administrative Fees; 4) Delinquent Assessments; 5) Current Assessments; 5) Any other amount owed the Association; 6) Fines. An owner defaulting under a payment plan shall be notified of such default via a Payment Plan Default Letter and collection activity shall immediately resume upon their account.

The Association shall not be required to enter into a payment plan with an owner if that owner has entered and defaulted on a payment plan within the previous two years. The Association shall not be required to enter into a payment plan with an owner if that owner is currently in foreclosure.

ARTICLE XVII **DOCUMENT RETENTION POLICY**

17.01 Document Retention Policy

- 1) Certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently by the Association.
- 2) Financial books and records shall be retained for a minimum of seven years.
- 3) Account records of current owners shall be retained for a minimum of five years.
- 4) Contracts with a term of one year or more shall be retained for a minimum of four years after the expiration of the contract term.
- 5) Minutes of meetings of the owners and the board shall be retained for a minimum of seven years.
- 6) Tax returns and audit records shall be retained for a minimum of seven years.

ARTICLE XVIII
CONTRACT PROCUREMENT POLICY

18.01 **Competitive Bidding Required for Certain Association Contracts:** The Board of Directors will actively seek bids within the parameters of this Policy to manage Association expenditure and budget controls. Bidding will be in accordance with the guidelines set forth within this Policy. Adherence to this Policy provides a means to ensure the Board of Directors is fulfilling its responsibilities when spending Association funds.

18.02 **Competitive Bid Procedure:** A Competitive Bid Procedure will be used when:

- (a) The projected total cost of the contract to the Association will be in excess of \$50,000.00; or
- (b) When the directors of the Association find there is need to engage in a Competitive Bid Procedure as set forth within this Contract Bidding Policy.

18.03 **Three Bidders Required:**

- (a) If qualified bidders exist, at least three bids should be solicited for each project.
- (b) The requirement for three bids may be waived if:
 - i. Work is an Emergency or Act of God: The Competitive Bid Procedure as set forth within this Policy may be omitted if the Board of Directors determines a situation to be an emergency or an act of God;
 - ii. Changing of vendors would disrupt existing warranties; or
 - iii. Other vendors are not willing to bid on the project.

18.04 **Bid Requirements Submitted to Vendors:** The Board's request for bids to vendors or contractors will include the following information:

- (a) Outline / Scope of Work (SOW) sought to be performed from the Vendor.
- (b) A targeted date that the Association seeks to have the work completed.
- (c) A request to the Vendor for an itemization of materials and labor necessary to complete the project.
- (d) A request that the Vendor submit copies of current liability insurance coverage and/or bonding, State and Local licenses, permits, and Workers' Compensation Insurance (WCI) coverage.
- (e) A list of Vendor references if the Association has not had prior experience with the Vendor.
- (f) Any possible penalties for completion by the Vendor after the promised completion date.

**Note: The above bid requirement documentation may vary based
on the scope and nature of the project.**

18.05 **Bid Package Submittal Requirements from Vendor:** Each Vendor's response to the Association must contain:

- (a) An estimated total cost of the project with a breakdown of materials and labor costs.

- (b) A projected start and completion date.
- (c) Any possible deviations from the contract with respect to cost and/or completion date, e.g., weather delays, unforeseen obstacles such as ground conditions.
- (d) A copy of the Vendor's current liability insurance coverage and/or bonding, State and Local licenses, permits, and Workers' Compensation Insurance (WCI) coverage.
- (e) A list of Vendor references if the Association has not had prior experience with the Vendor.
- (f) A Copy of the Vendor's proposed contractual agreement with the Association.

18.06 Direct Source, Sole Source, or Competitive Bid Exceptions will be considered when:

- (a) Time does not allow for the collection and reviews of bids.
- (b) Emergency work makes time a critical factor.
- (c) The item or service does not permit soliciting competitive bids; including purchases needed to address major facility failures, damages due to disasters, or purchases necessary to address immediate safety and security issues.
- (d) Only one Vendor can meet the necessary Bid Requirements set forth by the Association.

18.07 Bid Award / Selection:

- (a) The Board of Directors shall have the discretion of accepting a bid higher than the low bid if justified based on Vendor qualifications.
- (b) The selection justification must be documented by the directors of the Association in the Board's meeting minutes.
- (c) The Board shall have the discretion of accepting that bid or going out for bids again if only one bid meets all specifications.
- (d) The Board shall have the discretion of tabling the project or soliciting bids again if no bids are received.
- (e) If only one bid meets all specifications, the Board shall have the discretion of accepting that bid or soliciting bids again.

18.08 Conflicts of Interest:

- (a) If a conflict of interest exists, the Board member or Committee member(s) with the conflict of interest must remove themselves from the bid process.
- (b) An Association may contract with a Board member or Committee member, relative of a Board member or Committee member, or company owned by a Board member or Committee member only if:
 - i. The Board member or Committee member, relative of a Board member or Committee member, or company owned by a Board member or Committee member bids on the contract;
 - ii. There are at least 2 other competitive bidders aside from the Board member or Committee member, relative of a Board member or Committee member, or company owned by a Board member or Committee member;

- iii. The conflicted Board member or Committee member is not given access to the bids;
- iv. The conflicted Board member or Committee member does not participate in discussions regarding the contract;
- v. The conflicted Board member or Committee member does not vote on the issue; and
- vi. The conflict is disclosed to the Association.

18.09 **Best Judgment:** This Contract Bidding Policy is a financial tool and set of administrative guidelines to be used when considering Association expenditures. The Board shall at all times exercise its judgment and discretion to make the best decision possible on behalf of the Association and its membership.

[signature page follows]

EXECUTED this ___, day of May, 2023

North Bethany Lake Estates Homeowners Association, Inc.,
A Texas non-profit corporation

By: _____
Heather Young, President & Director

STATE OF TEXAS

§

COUNTY OF COLLIN

This instrument was acknowledged before me on the ___, day of May, 2023, by Heather Young, President & Director of North Bethany Lake Estates Homeowners Association, Inc., a Texas nonprofit corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

After Recording, Return to:
Manning & Meyers, Attorneys at Law
4340 N. Central Expressway, Suite 200
Dallas, TX 75206