

**CERTIFICATE FOR
RECORDATION OF DEDICATORY INSTRUMENT OF
CALDWELL'S CREEK HOMEOWNERS ASSOCIATION, INC.**

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TARRANT

§

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, Caldwell's Creek 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 Tarrant 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 Caldwell's Creek Homeowners Association, Inc., Executed by Caldwell's Creek, LTD., a Texas Limited Partnership, as Declarant, and recorded on or about May 9, 1994 at Document #D194111523 in the Real Property Records of Tarrant County, Texas, including any amendments thereof, additions, annexations and supplements thereto and entitled "Dedication and Restrictions" (the "Declaration") subjected to the scheme of development therein certain land described in the Declaration and Bylaws of the Association and located in Tarrant 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 _____, 2023

Caldwell's Creek Homeowners Association, Inc.,
A Texas non-profit corporation

By: _____
Peter Streit, President & Director

STATE OF TEXAS

§

COUNTY OF TARRANT

This instrument was acknowledged before me on the __, day of _____, 2023, by Peter Streit, President & Director of Caldwell's Creek 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

**FIRST AMENDED & RESTATED DECLARATION OF
CALDWELL'S CREEK HOMEOWNERS ASSOCIATION, INC.**

STATE OF TEXAS § **KNOW ALL MEN BY THESE PRESENTS:**
§
COUNTY OF TARRANT §

This FIRST AMENDED & RESTATED DECLARATION OF CALDWELL'S CREEK HOMEOWNERS ASSOCIATION, INC. (the "Amendment") is made effective as of the date of its filing in the Tarrant County Real Property Records by the Board of Directors of Caldwell's Creek Homeowners Association, Inc. (the "Board");

WITNESSETH

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Caldwell's Creek Homeowners Association, Inc., Executed by Caldwell's Creek, LTD., a Texas Limited Partnership, as Declarant, and recorded on or about May 9, 1994 at Document #D194111523 in the Real Property Records of Tarrant County, Texas, including any amendments thereto, additions, annexations and supplements thereto and entitled "Dedication and Restrictions" (the "Declaration") designating The Caldwell's Creek Homeowners Association, Inc. (the "Association") to administer and enforce the Covenants and Restrictions contained in the Declaration; and

WHEREAS, an Amendment to the Declaration of Covenants, Conditions and Restrictions of The Caldwell's Creek Homeowners Association, Inc. was recorded on or about November 29, 1995 at Document #D195215919 in the Real Property Records of Tarrant County, Texas, entitled "First Amendment of the Dedication and Restrictions of Caldwell's Creek Addition" (hereafter "First Amendment"); and

WHEREAS, a Second Amendment to the Declaration of Covenants, Conditions and Restrictions of The Caldwell's Creek Homeowners Association, Inc. was recorded on or about September 11, 1996 at Document #D196180639 in the Real Property Records of Tarrant County, Texas, entitled "Second Amendment of the Dedication and Restrictions of Caldwell's Creek Addition" (hereafter "Second Amendment"); and

WHEREAS, the Declaration and all amendments and supplements thereto remain in full force and effect; and

WHEREAS, Section 18 of the Declaration provides that "*notwithstanding any prior or subsequent condition, these Covenants and Restrictions may be amended and/or changed in part as follows: A. During the three (3) year period immediately following the date of recordation of the Covenants and Restrictions, the Declarant may amend or change these Covenants and Restrictions.; B. From and after the third (3rd) anniversary of the recordation of this Declaration, these Covenants and Restrictions may be amended or changed upon the express written consent of at least seventy percent (70%) of the outstanding votes as determined by number of Residential Lots of the Association. Any and all Amendments shall be recorded*

in the office of the County Clerk of Tarrant County, Texas and shall be binding upon all lot owners including, but not limited to, the property owners who purchased lots prior to the date the Amendments are recorded.” 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, the Association has met the requirements of Section 18 of the Declaration and Section 209.0041(h) of the Texas Property Code; and

WHEREAS, the Association, desires to amend the Declaration in certain respects.

RESOLVED, that pursuant to the provisions of Section 18 of the Declaration and Section 209.0041(h) of the Texas Property Code, the Declaration of Caldwell’s Creek Homeowners Association, Inc. are hereby revoked and replaced with the following First Amended & Restated Declaration of The Caldwell’s Creek Homeowners Association, Inc. Caldwell’s Creek 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.

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

**CALDWELL'S CREEK HOMEOWNERS ASSOCIATION,
INC.**

Tarrant County, Texas

**DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
CALDWELL'S CREEK HOMEOWNERS ASSOCIATION, INC.**

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ARTICLE I
DEFINITIONS

The following words when used in this First 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, organized as Caldwell's Creek 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 Colleyville or any other municipal authority.
- (g) **"Common Area"** means the land more particularly described in the Plat and made a part hereof for all purposes that is not 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, 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 Caldwell's Creek, LTD., a Texas Limited Partnership, and its successors and assigns. Declarant has assigned any and all rights that it owned to the Association.
- (k) **"Declaration"** means this Document, as it may be amended from time to time.

- (l) "**Documents**" means, singly or collectively as the case may be, 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 the Association, each Member being an Owner of a Lot, 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. Declarant was the initial Owner of all Lots, but has sold all lots to third parties and no longer retains an interest within the Association. 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 Tarrant County, Texas, and pertaining to the tract which is platted or to be platted as Caldwell's Creek Homeowners Association, Inc., a subdivision to the City of Colleyville, Texas, including 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 Caldwell's Creek Homeowners Association, Inc. The Property is located on land described in the Deed Records of Tarrant County, Texas and includes every Lot and any Common Area thereon. Specifically, the Property includes all certain tracts, parcels, or lots of land situated in the Harrel Hughes Survey, Abstract No 656 and the H.F. Wall Survey, Abstract No 1973 in the City of Colleyville, Tarrant county Texas, and being that certain 57.968 acre tract of land described in Volume 7058, Page 164, Deed Records, Tarrant County Texas.
- (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.

(w) "**SFH Lot**" means a Single Family Home Lot with a detached home for a Dwelling.

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 the City of Colleyville, Tarrant County, State of Texas, and are more particularly described on the recorded Plats for the Caldwell's Creek Homeowners Association, Inc., 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, including the Sewer Lift Station;
- c) The formal entrances to the Property, including (if any) the gate, signage, landscaping, electrical and water installations, planter boxes and fencing;
- d) Masonry and wrought iron walls and fences constructed by Declarant or the Homeowners Association;
- e) Ponds and fountains constructed by the Declarant or the Association;
- f) Sidewalks and walkways in the common areas constructed by Declarant or the Association;
- g) Landscaping and irrigation systems provided by Declarant or the Association;
- h) Wells and pumps installed by Declarant or the Association;
- i) Lights and electrical service in Common Areas provided by Declarant or the Association;
- j) Any modification, replacement, or addition to any of the above-described areas and improvements; and
- k) 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. Public streets are part of the Common Properties only to the extent they are not maintained or regulated by the city or county. All parking within the Association is subject to all restrictive covenants as set forth within this declaration, including, but not limited to those, within Article X, Section 10.18. 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 thirty percent (30%) 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.

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 Texas Document Inspection and Copying's Policy.

3.07 Indemnification. The Association indemnifies every Officer, Director, Committee Member, and Volunteer appointed by the Board of Directors (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. **To be clear, this Section will apply for the benefit of each Leader even if the Leader was or was alleged to have been negligent or strictly liable.** A Leader will not be liable for a mistake of judgment, negligent or otherwise. However, a Leader will not be excused by this Section from the consequences of his own willful malfeasance or other misconduct undertaken in bad faith.

ARTICLE IV EASEMENTS AND RIPARIAN RIGHTS

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 plat of Caldwell's Creek Subdivision recorded at Volume 7059, Page 164 in the Real Property Records of Tarrant County, Texas and shall be subject to the provisions of all other instruments filed for record and relating to the land in the subdivision.

4.03 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.

4.04 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.

4.05 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.

4.06 **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.

4.07 **Riparian Rights.** No owner shall have right to usage of any water within the Pond or Fountain that exists within the Association. Usage of the water solely rests within the Board of Directors of the Association. The Board of Directors may allow for owners to access the Pond and Fountain for recreational usage.

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 (i) 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. The annual assessments shall then be sent to each Lot owner along with notification of the annual meeting and is part of the Agenda at the Annual Meeting. The Assessment may be discussed at the Annual meeting.
- (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 fifteen (15) 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.

- (ii) **Veto Special Assessments.** 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 effective date of the Special Assessment. The Special Assessment will automatically become effective unless owners of at least 51% of the Lots disapprove the Special Assessment by petition or at a meeting of the Association within fifteen (15) days after the effective date of the Assessment.
- (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, shall be held in trust for the purposes for which they were collected. 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 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. 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 any 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 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 certified letter signed by an officer or agent of the Association, 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 Tarrant 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 10 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.

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. The board may adopt and amend policies regarding the application of payments. 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 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 any part of the Property, including Lots, 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 15 days' notice of its intent to exercise self-help.

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 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;

- r) 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.
- s) To elect the Officers of the Association;
- t) To fill vacancies on the Board in accordance with Section 209.00593 of the Texas Property Code;
- u) Generally, to have any and all powers necessary or incidental to the operation and management of the Association and the Common Properties.
- v) To adopt and amend Rules regulating the collection of delinquent Assessments and the application of payments;
- w) 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
- x) 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 Liability Limitations. No Member, Officer of the Association, or Member of the Board of Directors of the Association shall be personally liable for debts contacted 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.

7.04 Reserve Funds. All amounts collected as reserves, shall be held in trust for the purposes for which they were collected. Assessments collected as reserves for this purpose shall not be considered as advance payments of regular annual maintenance assessments.

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 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 are subject to all other provisions of this First Amended 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.**

Each Owner will cooperate with the Association and the Architectural Control Committee in connection with the establishment, evolution, and maintenance of reasonable controls on the pedestrian and vehicular traffic into and within the Property and abide by any and all Rules and Regulations of the Association, as adopted and promulgated from time to time, related to the entry upon or use of any private streets or other Common Properties within the Property.

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 prohibition on short term leasing of properties.

10.03 Minimum Lot Area. No Lot shall be subdivided without the approval of 100% of the Members of the Association.

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 3,000 square feet.

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 the City of Colleyville, if any, and Tarrant County, Texas and the requirements of the Plat provided. Unless otherwise approved by the ACC, no structure may be erected nearer than thirty feet to the front property line, or nearer than fifteen feet to any side property line. No building shall be located nearer than ten feet to any interior 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 in height.

10.07 Driveways. All modifications of the Driveway on a Lot is subject to consent of the ACC. Driveway extensions may no be added without express written consent of the ACC. Driveway locations must be coordinated with locations or electrical transformers in easements along side lot lines. Concrete driveways must have expansion joints not more than twenty feet apart, with an expansion joint at the back side of the driveway and adjacent to the sidewalk and approach. The width of a driveway (not less than twelve feet) shall flare to an adequate width but shall not encroach past the property line. The curb shall be sawed (not broken) and the drive approach constructed in such a manner as to conform with the City of Colleyville's specifications. All City sidewalks, will be of a roomed or brushed finish (no washed aggregate finish). The walks from the street curb to the residence shall have a minimum width of four feet. All walks required by the City of Colleyville will be constructed according to City specifications and shall have a minimum width of four feet. The four-foot section of all sidewalks and driveways in line with the City's sidewalk shall match the broom or brushed finish of the City sidewalk.

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, riding 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 the City of Colleyville 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 Tarrant County or the restrictive covenants as set forth herein.

10.13 **Landscaping.** Yards of Lots shall be sodded or otherwise planted by the Owner thereof with grass or another ground cover or plantings 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, but may not be installed without prior approval of the Architectural Control Committee. All areas visible from the street fronting a Lot shall be attractively landscaped. Dead trees must be removed in a prompt manner. Trees may not be placed near the property line such that they would cause a hazard to an adjacent property owner.

10.14 **Fences.** Any front fence on Lots 1 through 12 shall be constructed a minimum of six feet behind the private drive (parallel to John McCain Road) and shall be constructed of brick, natural stone or wrought iron. On all other lots, no fence, wall or hedge shall be permitted on the lot nearer to any front or to any side street than is permitted for the house. No fence, wall, or hedge located between interior lot lines and building setback lines shall be higher than eight feet from the ground, unless otherwise approved by the ACC. All wood fences shall be constructed with the finishes surface to the outside, but may not be constructed on the front forty feet of a lot or adjacent to any open Common Area. No wire or chain link fence is permitted. 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. All such structures must comply with all applicable laws and building codes, including, but not limited to, the International Building Code (IBC).

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 may place trash by the street or curb as applicable only on those days designated by the City or other local trash service as trash collection days. On all other days, an Owner must keep all trash, garbage containers and other waste material out of sight and hidden from public view. 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 & Solar Energy Devices.** 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. No solar energy device may be installed without prior approval of the Architectural Control Committee. All solar energy devices must be installed in accordance with the provisions set forth within Section 202.010 of the Texas Property Code.

10.17 Antenna & Satellite Dishes. The erection, construction, placement or installation of any television, radio or other electronic tower, serial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcast signals or other means of communication upon a Lot or upon any improvement thereon is prohibited, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The 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, Parking, 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, or any motorized vehicles (other than a golf cart or 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 forty-eight hours in any ninety day period and must also adhere to the requirements in 10.18(d) below. Golf carts may be used within the community, on streets only, but may not be parked or stored within the street.
- c) **Commercial Vehicles and Large Vehicles:** Commercial vehicles, and trucks with tonnage in excess of three-quarters ($\frac{3}{4}$) 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.
- d) **Misc. Parking & Traffic Provisions:** Prior to parking on a street, owners must park at least two cars in the garage of their residence, as well as at least three cars in the driveway of their residence. All parking of vehicles shall be subject to such reasonable Rules and Regulations as shall be adopted by the Board of Directors. No vehicles, including personal vehicles, Commercial Vehicles and **Temporary Vehicles**, shall block the personal driveway of any residential Lot without the Lot Owner's permission. No vehicle may exceed twenty miles per hour within the community.
- e) **Off Road Vehicles & Trail Usage-** Motorized off road vehicles (all-terrain vehicles, dirt bikes, utility terrain vehicles, 4x4s, dune buggies, etc.) may not be used within the community, including, but not limited to, the trails.

10.19 **Signs.** No signs shall be displayed to the public view on any Lot with the exception of signs promoting the sale of a particular Lot. Signs must be of customary dimensions (2' x 3' maximum) advertising said property for sale. Notwithstanding anything herein contained to the contrary, and all signs, if allocated, shall comply with all signs standards of the City of Colleyville, Texas, as such standards may be applicable to the Properties.

10.20 **Political Signs.** All political signs must meet the following requirements:

- a) Display is limited to ninety days before an election and ten days after the election.
- b) Signs must be ground mounted.
- c) Only one sign is allowed per candidate or ballot item.
- d) The following are not allowed on Political Signs within the Association:
 - a. Certain materials: (i.e. roofing, siding, paving, flora, balloons, lights, or non-standard decorative components of the signs).
 - b. Attaching the sign to plant material, trailer, vehicle or existing structure;
 - c. Traffic control devices;
 - d. Lights;
 - e. Painting of architectural surfaces;
 - f. Threats to public health or safety;
 - g. Signs larger than 4 feet x 6 feet;
 - h. Signs that violate the law;
 - i. Signs that contain language or graphics that would be offensive to the ordinary person; or
 - j. Music, sounds or streamers or anything else that would distract motorists.

10.21 **Flags.** An owner may display the flag of the United States of America; the flag of the State of Texas; an official flat or replica flag of any branch of the United States armed forces; or official flag of a public or private school or university. No other flag may be displayed within the Association. Political flags may not be displayed within the Association. Prior to erecting or installing a flag attached to a ground mounted flagpole, an owner must first submit plans and specifications to and receive the written approval of the Board or architectural control committee. The plans and specifications must show the proposed location, material, size and type of such flag and flagpole (and all parts thereof, including any lights to illuminate a displayed flag). The display of all flags and flagpoles must meet the requirements set forth within Section 202.012 of the Texas Property Code.

10.22 **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. No Owner may erect any structure of any type whatsoever in these Easement areas, nor may any Owner use the surface of an Easement area for any private use; 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 (including, but not limited to Oncor) 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.

10.23 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.

10.24 Offensive Activities. 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. 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 Property. Exterior 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. Owner may not dispose of pet waste in any trashcan but their own. It is a violation of the restrictive covenants of the Association to dispose of pet waste in trashcans of other residents without first obtaining the express consent of that resident. Aggressive dogs may not be kept upon any lot within the Association. 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 or violates the restrictive covenants set forth herein.

10.25 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 is 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 due 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 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 for mowing and cleaning said Lot on each respective occasion of such mowing or cleaning. If, at any time, weeds or other unsightly growth on the Lot exceed six inches (6") 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 as specified in Section 5.07(b) hereof) 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.

10.26 Animals. No birds, animals, livestock, or poultry of any kinds shall be raised, bred, or kept on any part of the Properties, except that not more than three (3) dogs, cats, or other household pets in the aggregate 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. More than three animals may be kept if approval for such is first sought

and obtained from the Board of Directors of the Association. 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. Pet waste must be disposed of in an owner's trashcan and may not be disposed of in another owner's trashcan.

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.

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 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 construction, landscaping, and property use that may adversely affect the general value or appearance of the Property. This provision is subject to the exception as set forth within Section 11.11 of this Declaration.

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 form in bulletins promulgated by the Committee.

11.06 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.

11.07 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.

11.08 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.

11.09 Scope of Authority of Committee. The Committee is authorized and empowered to consider and review any and all aspects of 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 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.

11.13 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.

11.14 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.

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 outlined 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 streets, 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, for a term of thirty five (35) years from the date that this Declaration is recorded in the Office of the County Clerk of Tarrant County, Texas, after which time those Covenants and Restrictions shall be automatically extended for successive period of ten (10) years unless an instrument signed by the Members entitled to cast seventy five percent (75%) of the votes of the Association, regardless of class, has been recorded in the Office of the County Clerk of Tarrant 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 sixty seven percent (67%) of the outstanding votes of all Members of the Association.

Any and all amendments to this Declaration, shall be recorded in the Office of the County Clerk of Tarrant County, Texas. Provided, however, no amendment to this Declaration may be enacted without the consent of the City of Colleyville if it involves any aspect of maintenance of streets or drainage facilities, access, or any other right which the City or any other governmental entity has been given by virtue of the terms of this Declaration.

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.

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 3 Months. No Owner may Lease their Property for a term of less than three (3) consecutive months; provided, however, a Lease converting to a month-to-month term after a three (3) consecutive month term is permitted as long as such carry over to a month-to-month term does not exceed three (3) months in the aggregate (i.e., the Lease shall need to be renewed for at least three (3) months after a maximum of three (3) months of carry over on a month-to-month basis). Daily, weekend, weekly and monthly rentals less than three (3) 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.

14.02 Prohibition on Rentals to Sex Offenders. No Owner may Lease their Property to a Tenant or occupant that is a Registered Sex Offender. 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.

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

The Association hereby adopts the following Contract Procurement Policy:

- 1) **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.
- 2) **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.
- 3) **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.
- 4) **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.

- 5) **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.
- 6) **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.
- 7) **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.

8) 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.

9) 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.

ARTICLE XIX
DISPUTE RESOLUTION

19.01 Introduction & Definitions. The Association, the Owners, and all persons subject to this Declaration (individually a “**Party**” and collectively, the “**Parties**”) agree to encourage the amicable resolution of disputes involving the Association and/or the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words when capitalized, have the following specified meanings:

- a) “**Claim**” means any claim, grievance, or dispute between the Parties arising from or related to the dedicatory instruments of the Association, including the Declaration, the Bylaws or the Certificate for the Property, or any claim related to the Common Areas or any improvements of any kind to the Common Areas, except Exempt Claims as defined below. Claims include, without limitation: (i) Claims arising out of or relating to the interpretation, application or enforcement of the Documents; (ii) Claims relating to the rights and/or duties of Declarant as Declarant under the Documents; (iii) Claims relating to the design, construction or

maintenance of the Common Maintenance Areas and/or the Property; and (iv) Claims by one or more Owners against the Association or another Owner related to the interpretation, application, enforcement, or compliance with the dedicatory instruments of the Association—including claims for breach of restrictive covenant or claims seeking a declaration judgment.

- b) **"Claimant"** means any Party having a Claim against any other Party.
- c) **"Exempt Claims"** means the following claims or actions, which are exempt from this Article:
 - (i) the Association's claim for assessments or any action by the Association to or enforce provisions of this Declaration;
 - (ii) an action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration, however the claim shall only be exempt insofar as it related to obtaining a temporary restraining order and temporary injunction. After these hearings take place, the Claimant must use the processes and procedures set forth herein;
 - (iii) a suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.
- d) **"Respondent"** means the Party against whom the Claimant has a Claim.

19.02 Mandatory Procedures. It is intended that all Claims will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, Declarant, the Association, the Board, and all Owners shall be bound by the following dispute resolution procedures of this Article XIV.

19.03 Notice. Claimant must notify Respondent in writing of a Claim (the **"Notice"**), stating plainly and concisely; (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision(s) of the Declaration, By-laws, Certificate or other authority out of which the Claim arises); and (3) what Claimant wants Respondent to do or not do to resolve the Claim.

19.04 Right to Cure. If the Notice sets forth a Claim regarding an alleged defect or defects (whether one or more, the **"Alleged Defects"**) in any improvements on any portion of the Common Area or the Property or a Lot, Respondent shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

- a) **Notice of Alleged Defect.** If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof Claimant shall give written notice of the Alleged Defect (**"Notice of Alleged Defect"**) to the other Party who constructed the improvement with respect to which the Alleged Defect relates.
- b) **Right to Enter, Inspect, Repair and/or Replace.** Within a reasonable time after the receipt by a Party of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Party, such Party shall have the right, upon reasonable notice to Claimant and during business hours, to enter onto or into the Common Area, areas of Association responsibility, or any other portion of the Property for the purposes of inspecting and/or conducting testing and, if deemed necessary such Party at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Party

shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

c) **No Additional Obligations; Irrevocability and Waiver of Right.** Nothing set forth in this Article shall be construed to impose any obligation on a Party to inspect, test, repair, or replace any item or Alleged Defect for which such Party is not otherwise obligated under applicable law or any warranty provided by such Party. The right reserved to a Party to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to such Party except by a Recorded, written document executed by such Party.

19.05 Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to this Article. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding or mediation alleging (1) damages for costs of repairing an Alleged Defect ("**Alleged Defect Costs**"), (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Owners prior to initiation of any legal action, regulatory action, cause of action, proceeding or mediation which notice shall include at a minimum (1) a description of the Alleged Defect; (2) a description of the attempts of the other Party to correct such Alleged Defect and the opportunities provided to the other Party to correct such Alleged Defect; (3) a certification from an architect or engineer licensed in the State of Texas that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (4) the estimated Alleged Defect Costs; (5) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board or the Association's management company (if any); (6) a description of the fee arrangement between such attorney and the Association; (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (8) the estimated time necessary to conclude the Claim; and (9) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and its Members.

19.06 Alternative Dispute Resolution.

- a) **Negotiation.** Each Party to a Claim shall make every reasonable effort to meet in person and confer for the purpose of resolving a Claim by good faith negotiation. Each Party to the Claim Shall bear their own attorneys' fees and costs in connection with such negotiation.
- b) **Mediation.** If the Parties cannot resolve their Claim within such time period as may be agreed upon by such Parties (the "**Termination of Negotiations**"), the Party instituting the Claim (the "**Disputing Party**") shall have thirty (30) days after the Termination of Negotiations within which to submit the Claim to mediation pursuant to the mediation procedures adopted by the American Arbitration Association, JAMS Mediation Services, or any successor thereto or

to any other independent entity providing similar services upon which the Parties to the Claim may mutually agree. No person shall serve as a mediator in any Claim in which such person has a financial or personal interest in the result of the mediation, except by written consent of all Parties to the Claim. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

- c) **Position Memoranda; Pre-Mediation Conference.** Within ten (10) days of the selection of the mediator, each Party to the Claim shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all Parties to the Claim shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the Parties to the Claim mutually agree to extend the mediation period. The mediation shall be held in the County where the Property is located or such other place as is mutually acceptable by the Parties to the Claim.
- d) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Claim. The mediator is authorized to conduct joint and separate meetings with the Parties to the Claim and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties to the Claim agree to obtain and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on any Party to the Claim.
- e) **Exclusion Agreement.** Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.
- f) **Parties Permitted at Sessions.** Persons other than the Parties to the Claim may attend mediation sessions only with the permission of all Parties to the Claim and the consent of the mediator. Confidential information disclosed to a mediator by the Parties to the Claim or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic record of the mediation process.
- g) **Expenses of Mediation.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any expert advice produced at the direct request of the mediator, shall be borne equally by the Parties to the Claim unless agreed to otherwise. Each Party to the Claim shall bear their own attorneys' fees and costs in connection with such mediation.

19.07 Termination of Dispute Resolution. If the Parties cannot resolve their Claim pursuant to the procedures described above, the dispute resolution procedures as set forth within this Article are terminated and the Disputing Party may commence with litigation on their claim.

19.08 Enforcement of Resolution. If the Parties to a Claim resolve such Claim through negotiation or mediation in accordance with the above, and any Party thereafter fails to abide by the terms of such negotiation or mediation, and any Party to the Claim thereafter fails to comply with such resolution, then the other Party to the Claim may file suit to enforce the terms of such negotiation or mediation without the need to again comply with the procedures set forth in this Article. In such event, the Party taking

action to enforce the terms of the negotiation or mediation shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata), all costs incurred to enforce the terms of the negotiation or mediation including, without limitation, attorneys' fees and court costs.

19.09 General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not a party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

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EXECUTED this __, day of _____, 2023

Caldwell's Creek Homeowners Association, Inc.,
A Texas non-profit corporation

By: _____
Peter Streit, President & Director

STATE OF TEXAS

§

COUNTY OF TARRANT

This instrument was acknowledged before me on the __, day of _____, 2023, by Peter Streit, President & Director of Caldwell's Creek 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