

Denton County
Cynthia Mitchell
County Clerk
Denton, Tx 76202



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As
Restrictions

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(Parties listed above are for Clerks reference only)

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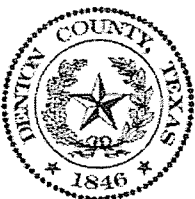
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THE STATE OF TEXAS }
COUNTY OF DENTON }

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County Clerk
Denton County, Texas

STATE OF TEXAS

COUNTY OF DENTON

AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE HILLS OF KINGSWOOD

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Hills of Kingswood is being re-recorded solely for the purpose of correcting page numbers , correcting the Table of Contents and to include Exhibit "C", which was inadvertently left off of the Declaration and is otherwise not altered. The date and time of recording will revert back to the date of recording of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Hills of Kingswood which was filed July 27, 2010, under Instrument Number 2010-72895 and is intended to be substituted for and is to replace Instrument Number 2010-72895. This document is being re-filed in substitution and correction of Instrument Number 2010-72895.

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AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE HILLS OF KINGSWOOD

BACKGROUND

A. Declarant is the owner and developer of certain real property more particularly described on Exhibit "A" attached hereto which is located in the City of Frisco, Denton County, Texas, and commonly known as "The Hills of Kingswood". The Original Declaration (as hereafter defined) established an association for The Hills of Kingswood to administer certain responsibilities with respect to the Common Properties, as defined in Section 1.11, and to administer and enforce the provisions of this Declaration and the By-Laws. Declarant desires to impose these covenants, conditions, restrictions, and easements on the real property subjected hereto, yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the distinction of The Hills of Kingswood;

B. Declarant hereby again declares that all of the property described in Exhibit "A" to this Declaration and any additional property which is hereafter made subject to this Declaration in accordance with Article IX shall be held, sold, transferred, used and conveyed subject to this Declaration and the following additional easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Properties or any part thereof; their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof;

C. Declarant executed and caused the Declaration of Covenants, Conditions and Restrictions for the Hills of Kingswood recorded on November 19, 2008, under Clerk's File No. 2008-124285 of the Real Property Records of Denton County, Texas (the "Original Declaration");

D. The Supplemental Land has not been platted at this time;

F. HKW Land Holdings, L.P., a Texas limited partnership as the owner of the Supplemental Land wishes to join in this Declaration for the purpose of subjecting the Supplemental Land to the terms set forth at Section 9.5, herein below; and

G. Declarant desires to restate and amend the Original Declaration in accordance with the further provisions hereof.

This Declaration does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code Ann., Section 81.001, et seq. (Vernon 1984).

Article 1
DEFINITIONS
AND RESTATEMENT AND
AMENDMENT OF ORIGINAL DECLARATION

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. Affiliate: "Affiliate" shall mean a partner, director, subsidiary, shareholder, officer, employee, agent, co-venturer, executor, personal representative, trustee, attorney or a Person or entity which (either directly or indirectly through one or more intermediaries), controls, is in common control with or is controlled by, another Person or entity and any Person or entity that is a director, trustee, officer, employee, agent, partner, shareholder, subsidiary or attorney of any of the foregoing. For the purposes of this definition, the term "control" means (a) legal or beneficial ownership of 10% or more of the voting interests of an entity, or (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise.

1.2. Architectural Review Committee, ARC or Committee: That particular Committee which is described and explained within Article XII.

1.3. Area of Common Responsibility: The Common Properties, together with those areas, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants or contracts become the responsibility of the Association.

1.4. Articles of Incorporation or Articles: The Articles of Incorporation of The Hills of Kingswood Homeowners Association, Inc., on file with the Secretary of State for the State of Texas, as they may be amended.

1.5. Association: The Hills of Kingswood Homeowners Association, Inc., a Texas non-profit corporation, its successors or assigns, which shall have the power, duty and responsibility for administering and enforcing this Declaration.

1.6. Base Assessment: Assessments levied on all Lots subject to assessment under Section 10.8 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 10.1 and 10.3.

1.7. Board of Directors or Board: The body responsible for administration of the Association selected as provided in the By-Laws and generally serving the same role as the board of directors under Texas corporate law.

1.8. Builder: Any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person's business.

1.9. By-Laws: The By-Laws of The Hills of Kingswood Homeowners Association, Inc., set forth in the Notice of Dedicatory Instruments and incorporated herein by reference, as they may be amended from time to time.

1.10. Class A: The class of membership in the Association consisting of all Owners other than the Class "B" Member, as more particularly described in Section 3.3(a).

1.11. Class B: The class of membership in the Association consisting of the Declarant, as more particularly described in Section 3.3(b).

1.12. Class "B" Control Period: The period of time commencing on the date of recordation of the Original Declaration in the public Real Estate Records of Denton County, Texas, and continuing thereafter until and ending on the date of the last to occur of: (i) substantial completion of all development within the Properties, as determined by the Declarant; (ii) the date when all of the Lots permitted for the Properties have Certificates of Occupancy issued thereon and have been conveyed to Persons other than a Builder; or (iii) the date that the Declarant shall have conveyed to the Association all of its interest in all Common Properties and Areas of Common Responsibility. The Class "B" Control Period shall also sometimes be referred to herein as the Development Period. The Declarant, as the Class B Member, may at any time elect (by notice, in writing recorded in the Real Property Records of Denton County, Texas) to terminate the Class B Control Period.

1.13. Common Properties: All real and personal property which the Association owns, leases or otherwise maintains or holds possessory or use rights in for the common use, maintenance and enjoyment of the Owners and Residents, including easements and licenses, together with any and all improvements that are now or that may hereafter be constructed thereon. The Declarant, reserves the right to use, during the Class "B" Control Period, portions of the Common Properties for business matters directly and indirectly related to development, marketing and sale of The Hills of Kingswood. The concept of Common Properties will also include: (i) any and all public right-of-way lands for which the City of Frisco has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as but not limited to: street medians, street underpasses, streetscape, hike and bike trails, park areas and quasi-governmental service facilities; and (ii) any and all facilities provided by the Declarant and/or the Association to or for the benefit of the local police, fire and similar governmental departments for which no reimbursement via public funds is requested or anticipated. One or more portions of the Common Properties may from time to time be reasonably limited to private functions, and conversely, one or more portions of otherwise private property may be utilized for Association functions and activities. Declarant shall convey record title to some or all of the Common Properties to the Association if, as and when deemed

appropriate by Declarant or as may be required by governmental officials, and Declarant shall at all times have and retain the right to effect minor redesigns or minor reconfigurations of the Common Properties and to execute any open space declarations applicable to the Common Properties which may be permitted in order to reduce property taxes, and to take whatever steps may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes.

1.14. Common Expenses: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserves for repairs and replacements, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation and also including, without limitation, real estate taxes on the Common Properties, if any, and insurance premiums. Common Expenses will also include all expenses of maintaining and operating the Common Properties, (including, but not limited to, private streets, gate or guard house or houses, staffing the gate or guard house with personnel) during the Development Period and thereafter.

1.15. Community-Wide Standard: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and its designees, if any.

1.16. Covenants: All Covenants, conditions, restrictions, easements, easements, charges and liens set forth within this Declaration.

1.17. Declarant: Hills of Kingswood, L.P., a Texas limited partnership, or any successor, successor-in-title, or assign who takes title to any portion of the property subject to this Declaration and who is designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant. However, no Person or entity merely purchasing one or more Lots from the Declarant in the ordinary course of the Declarant's business shall be considered a "Declarant."

1.18. Declaration: This particular instrument entitled "Declaration of Covenants, Conditions and Restrictions for The Hills of Kingswood", together with any and all amendments or supplements thereto.

1.19. Design Guidelines or Subdivision Design Guidelines: Except as hereafter provided, those particular standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Properties, and all amendments, bulletins, modifications, supplements and interpretations thereof, which Design Guidelines shall be promulgated by the Declarant, the Board or the Committee of this Association.

1.20. Development Period: The period of time which is also defined herein above as the Class "B" Control Period.

1.21. Dwelling Unit: Any building or portion of a building situated upon the Properties which is designated and intended for use and occupancy as a residence.

1.22. Easement Area: Those areas which may be covered by an easement specified in Article XIII.

1.23. Exempt Property: The following portions of the Properties: (i) all land and Improvements owned by any instrumentality, political subdivision or agency of any governmental entity acting in a governmental (rather than a proprietary) capacity; (ii) all land and Improvements owned (including legal and beneficial ownership whether now or in the future) by the Association or constituting a portion of the Common Properties; (iii) all land and improvements at the Improvements which are not only exempt from the payment of ad valorem property taxes by Denton County, applicable school districts and the State of Texas, but are also exempt from the payment of any assessments hereunder as expressly determined by written resolution of the Declarant or the Association; and (iv) such other lands and/or Improvements and/or Lots which are specifically exempted from the payment of Base Assessments in accordance with a special resolution of the Board.

1.24. Governing Documents: This Declaration, the Bylaws, the Articles, any rules and regulations promulgated thereunder and the Design Guidelines.

1.25. Improvement: Any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to, adding or removing a structure, adding or removing square footage area space to or from a structure, painting or re-painting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

1.26. Lot: Each numbered, platted lot, whether improved or unimproved, shown on any subdivision plat of the Properties, which Lot is intended for development, use, and occupancy as a residence for a single family. The term shall refer to the land which is part of the Lot as well as any improvements thereon. The term shall not include Common Properties of the Association or any portion of the Properties which may be dedicated to the public.

1.27. Member: A Person subject to membership in the Association as provided in Article IV.

1.28. Mortgage: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to a Lot.

1.29. Mortgagee: A beneficiary or holder of a Mortgage.

1.30. Mortgagor: Any Person who gives a Mortgage.

1.31. Notice of Dedicatory Instruments. A recorded instrument filed in the Real Property Records of Denton County, Texas which shall contain or refer to Dedicatory Instruments (as such term is defined in Section 202.001 of the Texas Property Code) affecting the Properties, as such Notice is to be recorded in accordance with the requirements of Section 202.006 of the Texas Property Code.

1.32. Owner: One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.33. Person: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.34. Plat: The Final Plat of Kingswood, Phase I, a subdivision of the City of Frisco, Denton County, Texas, recorded in Volume Y, Page 549-556 of the Plat Records of Denton County, Texas. At this time the Plat or Plats covering the Supplemental Land has not been recorded in the Map or Plat Records of Denton County, Texas.

1.35. Properties: The real property described in Exhibit "A", together with such additional property as is at any time subjected to this Declaration in accordance with Article IX.

1.36. Resident: Any Person who inhabits a Dwelling Unit, either permanently or temporarily, and may include, without limitation, an Owner or lessee and their respective families, guests, invitees, servants or employees.

1.37. Special Assessment: Assessments levied in accordance with Section 10.6 of this Declaration.

1.38. Specific Assessment: Assessments levied in accordance with Section 10.7 of this Declaration.

1.39. Structure: "Structure" shall mean and refer to: (i) any thing or device, other than trees, shrubbery (less than two feet high if in the form of hedge) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot) including but not limited to any building, garage, porch shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent Improvement to any Lot; (ii) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; and (iii) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; (iv) any change in the grade of any Lot of more than three (3) inches from that existing at the time of initial approval by the ARC.

1.40. Supplemental Declaration: An amendment or supplement to this Declaration filed pursuant to Article X that subjects additional property to this Declaration, which property is not yet subject to this Declaration and/or imposes expressly or by reference, additional restrictions on the real property described therein.

1.41. Supplemental Land: That certain tract or parcel of land that described on Exhibit C attached hereto and made apart hereof for all purposes, which Supplemental Land may be incorporated into the Properties by Supplemental Declaration or Supplemental Declarations at such time as Declarant elects, if and when Declarant is able to acquire the Supplemental Land or any portion there or if and when the owner of the Supplemental Land or any portion thereof agrees to subject its land to this Declaration. Declarant does not presently own the Supplemental Land and has not contracted to acquire same; however, Declarant may seek to purchase the Supplemental Land in the future. If and at such time as Declarant acquires the Supplemental Land it may be incorporated into the Properties by separate phases or all as one parcel. No portion of the Supplemental Land will be deemed to be encumbered by this Declaration until same has actually been annexed or added to the Properties by Supplemental Declaration as set forth at Article IX, herein. Declarant may elect to add or subject none or only a part of the Supplemental Land to this Declaration and the Properties and may elect to remove some or all of the Supplemental Land from the land included as Supplemental Land as and if Declarant so desires.

1.42. Declaration: This Declaration of Covenants, Conditions and Restrictions for The Hills of Kingswood, as it may be amended and supplemented from time to time.

1.43. Zoning Ordinance: "Zoning Ordinance" shall mean and refer to the City of Frisco Comprehensive Zoning Ordinance No. 00-11-01 as same has been amended by City of Frisco Ordinance No. 06-02-13 applicable to the Properties and all amendments thereto.

Declarant hereby restates and amends Original Declaration in its entirety so that this Declaration is substituted therefore, with this Declaration to be effective as of the date of recordation hereof and with the Original Declaration to be effective from the date of its recordation until the date of recordation of this Declaration. Declarant intends that the Original Declaration is amended and restated in its entirety by this Declaration and that this Declaration replaces the Original Declaration. This Restated and Amendment of the Original Declaration is approved in accordance with the provisions of Section 15.3(a) of the Original Declaration and this Declaration.

Article II

RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES

2.1. Common Properties. Subject to the provisions of Sections 2.1 through 2.10, inclusive, of this Article, each and every Owner and Resident and their respective family, guests, and invitees, shall have a non-exclusive right and easement of enjoyment in and to all Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject, however, to the following:

A. The right of the Declarant or Association to prescribe reasonable regulations and policies governing, and to charge fees and/or deposits (e.g., key and access card deposits) related to, the use, operation and maintenance of the Common Properties, including rules limiting the

number of guests who may use the Common Properties and imposing fines for infractions of such regulations;

B. Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Declarant to develop and improve the Properties or Common Properties or by the Association to improve or maintain the Common Properties;

C. The right of the Association to enter into and execute contracts with any party (including, without limitation, the Declarant or its corporate Affiliates) for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

D. The right of the Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

E. The right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Owner or Resident to use or enjoy any of the Common Properties for any period during which any assessment (including, without limitation, "fines") against such Owner's or Resident's Lot remains unpaid, or during which non-compliance with the Governing Documents exists, and otherwise for any period deemed reasonable by the Association for an infraction of the Governing Documents;

F. The right of the Declarant and/or the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority or utility for such purposes and upon such conditions as may be agreed to by the Declarant and the Board;

G. The right of the Declarant and/or the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes;

H. The Governing Documents and the terms thereof;

I. The right of the Declarant and/or the Association to permit use of any Common Properties by Persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

J. The right of the Declarant and/or the Association to deny or prohibit the use of any facilities situated upon the Common Properties by Persons other than the Owners, their families, lessees and guests upon such terms and conditions as may be established by the Board from time to time;

K. The right of the Declarant and/or the Association to deny or prohibit access to certain of the Common Properties by any and all Persons, including but not limited to, Owners and Residents as more specifically set forth below at Section 2.2.

An Owner who leases his or her Lot shall be deemed to have assigned all such rights and easements to the lessee of such Lot for the period of the lease.

2.2. Greenbelt Areas. Limited access greenbelt areas are located upon and include certain portions of the Common Properties identified on the Plat as the portion of Common Area D-1 that is twenty feet (20') in width and located adjacent to the rear Lot line of Lots 1-15, Block D and Common Area B-2. These limited access greenbelt areas do not include all of Common Properties identified on the Plat. The restricted areas of the Common Properties are generally defined and described as the portions of Common Areas D-1 and B-2, which lie adjacent to the rear Lot line of Lots 1-15, Block D and Common Area B-2 as shown on the Plat. These restricted portions of the Common Properties may be fenced along the lot lines and across portions of the Common Properties so that it will be apparent that no Person is to access these areas of the Common Properties except those authorized by the Declarant or the Association. Entry will be permitted to those authorized by the Declarant or the Association solely for purposes of maintenance of landscaping, fencing, landscape irrigation or other Improvements within said restricted Common Properties. It is intended that these portions of the Common Properties which are restricted to access except for certain Persons authorized by the Declarant or Association shall be used solely as no public access greenbelts, buffer areas and view corridors and not for any other purpose. These restricted areas of the Common Properties are not to be accessed by Owners or Residents of any Lots, including, but not limited to, Owners or Residents of Lots which abut these restricted Common Properties, it being intended that ownership of a Lot abutting such restricted Common Properties does not entitle one to have physical access to these restricted Common Properties.

2.3. Private Streets. Another special portion of the Common Properties include the private streets which are identified by name on the Plat, which private streets will be dedicated to the Association at such time as the Declarant determines it is appropriate to so dedicate such private streets. The Declarant and the Association will also have the right to, but absolutely no obligation to, prescribe regulations, rules and policies governing the use of the private streets which rules, regulations and policies may include speed limits governing the speed of motorized vehicles using the private streets, may prohibit parking and standing of vehicles or limit parking and standing of vehicles on the private streets and may provide for the means for enforcing parking regulations, speed limits and use of the private streets by motorized vehicles and by Persons. Rules, regulations and policies may also be adopted by the Declarant and/or the Association governing traffic flow, which rules, regulations and policies may provide for stop signs, require that certain traffic yield to other traffic and may dictate that certain areas are restricted to through traffic or are restricted regarding u-turns, left turns or right turns so as to provide for the proper flow of vehicular traffic within the private streets within the Properties. In addition, pedestrian or bike paths may be established and pedestrian or bike cross-areas may be established within the private streets. The preceding is not intended to be an exclusive list regarding regulations, policies and rules which may be adopted by the Declarant and/or the Association governing the use of private streets and it is intended hereby that the Declarant and the Association be given broad authority to govern the use and operation of the private streets by persons and vehicles. The Association has absolutely no obligation to adopt any of the preceding regulations or to enforce same if rules, regulations or policies are adopted.

2.4. Residents Bound. Each Owner of each Lot shall be deemed and held directly responsible and liable for the acts, conduct and omission of each and every Resident, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), guests and invitees. Association through its Board shall have the power to levy a Specific Assessment as contemplated by Section 10.7, herein below for damages and expenses incurred by the Association as a result of the acts, conduct or omissions of an Owner, such Owner's Residence, guests or invitees or the guests or invitees of Resident. The Specific Assessment shall be levied in accordance with the requirements of this Declaration and the other Governing Documents and will be collected in accordance therewith and in accordance with the requirements of the Board. Any such Specific Assessment will be secured by a Payment and Performance Lien. The Payment and Performance Lien shall extend to cover and secure the proper payment and performance by each and every Resident, guest and invitee affiliated with each Owner.

2.5. Restricted Actions. No Owner or Resident shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

2.6. Damage to the Common Properties. Each Owner and Resident shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Owner or Resident or their family, guests or invitees.

2.7. Rules of the Board. The Board may make and enforce reasonable rules and regulations governing the use of the Properties which extend to and cover matters such as (but not limited to) smoking, the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, dress and attire and the supervision by attending adults of children, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner or Resident determined to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

2.8. User Fees and Charges. The Board may levy and collect charges and fees for the operation and maintenance of the Common Properties and services which the Board determines to be necessary for the advancement, benefit and welfare of the Owners and Residents. In establishing user fees, the Board may formulate reasonable classifications of users. Such fees must be uniform within each class but need not be uniform from class to class. If an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee shall be delinquent and upon written notice to said Owner shall become a personal debt of said Owner. Failure of any Owner to pay said fee and charge when due and payable, in addition, shall be a breach of these Covenants and shall result in suspension of said Owner's and such Owner's Resident's rights or privileges.

2.9. Use of Common Properties. Each Owner acknowledges that certain common facilities may be provided within the Common Properties for the use and enjoyment of the Owners and Residents, and their respective families, tenants, and invitees. Inclusion of a facility in this Section 2.9 shall not, under any circumstances, obligate the Declarant or the Association to provide such facility, nor shall the omission of any type of facility from this Section 3.9 prevent the Declarant or the Association from providing such facility at a later time. Each Owner hereby acknowledges that there are risks associated with the use of any Common Properties and that ALL USERS OF SUCH FACILITIES ARE SOLELY RESPONSIBLE FOR SUCH RISK. Each Owner, by accepting a deed to a Lot, acknowledges that he or she has not relied upon the representations of Declarant or the Association with respect to the safety of any Common Properties (or Improvements thereon) within the Properties.

The Association may, but shall not be obligated to, contract with, employ or otherwise provide, from time to time, monitoring personnel to be present at any facility within the Properties. Each Owner acknowledges that the presence of such personnel shall not create a duty on the part of Declarant or the Association to provide for, insure or guarantee the safety of any user of the facility. Each Owner acknowledges that the presence of such monitoring personnel shall not in any way alter the risks assumed by each Owner, his or her family members, tenants, other occupants of each Owner's Lot and guests of any such Persons, which risks shall continue to be assumed by the user of the recreational facility .

2.10. Construction Activities. All Owners are hereby placed on notice that Declarant, any Affiliate of Declarant and/or the Association, their respective agents, contractors, subcontractors, licensees and other designees, successors or assignees, may be, from time to time, conducting excavation, construction and other activities within or in proximity to the Properties. By the acceptance of a deed or other conveyance or Mortgage, leasehold, license, easement or other interest, and by using any portion of the Properties, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Properties where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (c) Declarant, any Affiliate of Declarant and/or the Association and all of their respective agents, contractors, subcontractors, licensees and other designees, successors and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses and damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the aforesaid activities, and (d) any purchase or use of any portion of the Properties has been and will be made with full knowledge of the foregoing.

ARTICLE III
ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility, subject to its right to delegate or assign such responsibility to other entities as provided in this Declaration and the By-Laws.

The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles of Incorporation and Texas law.

3.2. Membership. Every Owner shall automatically be and must at all times remain, a Member of the Association. No Owner, whether one or more Persons, shall have more than one membership per Lot owned. If a Lot is owned by more than one Person, all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The membership rights and privileges of an Owner who is a natural Person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, which written instrument shall be subject to the approval of the Association.

3.3. Voting. During the Class "B" Control Period, the Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. All Builders are Class "A" Members.

Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 3.2. There shall be only one vote per Lot or if the Owner owns multiple contiguous Lots with only one residence, there shall be only one vote for multiple Lots. If a Member owns multiple contiguous Lots and such Member replats the Lots as one Lot with only one residence there shall be only one vote for the replatted Lot. However, as set forth as Section 10.4 (a), if any two or more Lots identified on the Plat as of the date of execution of this Declaration shall ever be re-platted so as to constitute fewer Lots then these re-platted Lots shall continue to be assessed as the number of Lots which originally existed on the original Plat of the Properties.

In any situation in which there is more than one Owner of a particular Lot, the vote for such Lot may be exercised by any one of them; provided, it shall be exercised as directed by written notice signed by all such co-Owners and filed with the Secretary of the Association prior to any vote of the membership, if such notice is given. Absent such direction, the Lot's vote shall be suspended if more than one Person seeks to exercise it. There shall be no fractional voting and the Board may suspend the voting rights of any Member who is not in good standing. A Member shall not be in "good standing" if such Member is: (a) in violation of any portion of the Governing Documents and/or any portion of the Zoning Ordinance; or (b) delinquent in the full, complete and timely payment of any Base Assessment, special assessment, or any other fee,

charge or fine which is levied, payable or collectible pursuant to the provisions of the Governing Documents.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of actions proposed under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period. The Class "B" Member shall have twenty five (25) votes for each Lot it owns.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

- (i) the expiration of the Class "B" Control Period as defined at Section 1.12;
- or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

3.4. Rulemaking Authority Regarding Meetings and Voting. The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable with regard to membership meetings and voting, including, without limitation, rules regarding: (i) any meeting of Members; (ii) proof of membership in the Association; (iii) the status of good standing; (iv) evidence of right to vote; (v) the appointment and duties of examiners and inspectors of votes; (vi) the procedures for actual voting in person or by proxy; (vii) registration of Members for voting purposes; and (viii) such other matters concerning the conduct of meetings and voting as the Board shall deem necessary or advisable.

3.5. Board of Directors. The affairs of the Association are managed by a board of three individuals, all of whom shall be elected by the Class B Member until the end of the Class B Control Period, and thereafter the number of Board members may be increased and the Class A Members shall elect all of the Directors.

The Directors elected by the Class B Member need not be Members of the Association. Directors elected by the Class A Members shall be Members, shall be elected for terms of office as set forth in the Bylaws and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the Board by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Directors representing the same class of Members who elected the Director whose position has become vacant. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill. Notwithstanding the above, Directors elected by the Class B Member shall serve, and may be removed and replaced, only at the discretion of the Class B Member acting in its sole discretion. As contemplated in the Bylaws, all Directors shall have staggered terms, unless otherwise provided in the Bylaws from time to time.

Unless otherwise prohibited by the Bylaws, the Board shall be entitled to have one or more private workshop meetings and to have one or more public meetings per calendar year. The actual election of the directors shall take place in accordance with the Bylaws or, to the extent not inconsistent with the Bylaws, the directives of the then-existing Board.

3.6. Notice and Voting Procedures. Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with Texas law.

Article IV
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION;
GENERAL POWERS AND DUTIES OF THE BOARD

4.1. Common Properties. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Properties and all improvements thereon (including, without limitation, furnishings, equipment, and landscaping), and shall keep them in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant may convey to the Association improved or unimproved real estate located within the Properties subject to this Declaration, personal property, and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as a Common Expense for the benefit of the Members, subject to any restrictions set forth in the deed.

4.3. Rulemaking. The Association, pursuant to Article XII, may make and enforce reasonable rules governing the use of the Properties that are consistent with this Declaration.

4.4. Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, or rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines. In addition, the Association may suspend a Member's right to vote, and may suspend any services provided by the Association to any Owner or such Owner's Lot, during the period of any delinquency in payment of assessments or other charges due to the Association. The Association may also exercise self-help and seek relief in any court for violations or to abate nuisances.

The City of Frisco shall be entitled to enforce the maintenance provisions of this Declaration in the event that the Association, its successors or assigns, shall fail or refuse to, in accordance with procedures set forth in Section 15.10 of this Declaration. The Association, by contract or other agreement, may request that Denton County and the City of Frisco, Texas, enforce their respective ordinances on the Properties for the benefit of the Association and its Members.

4.5. Implied Rights: Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.6. Governmental Interests. For so long as the Declarant owns any property subject to this Declaration, the Declarant may designate sites within the Properties for fire, police, water, drainage, and utility facilities, parks, and other public facilities. The sites may include Common Properties, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents thereto.

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

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.8. Dedication of Common Properties. The Association may dedicate portions of the Common Properties to Denton County, the City of Frisco, Texas, or to any other local, state, or federal governmental entity, provided, the City of Frisco shall have no obligation to accept any private streets for public access and maintenance and may impose such conditions upon acceptance as it deems appropriate.

4.9. Disclaimer Regarding Security. **The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the Declarant hereunder, nor any successor declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any gate limiting vehicular access to the Properties or any fire protection system, burglar alarm**

system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants, invitees and licensees that the Association, its Board of Directors and committees, and the Declarant hereunder are not insurers and that each Person using the Properties assumes all risks for loss or damage to Persons, to Lots and to the contents of Lots resulting from acts of third parties.

The gatehouse, if any, located at the entrance to the Properties is intended as a convenience for the Declarant during construction and marketing within the Properties and is not designed or intended to enhance the security within or safety of persons residing within the Properties or their guests. The Declarant may, but shall not be obligated to, use such gatehouse during construction within the Properties for whatever purposes Declarant chooses. Declarant may also, but shall not be obligated to, employ or retain, as a Common Expense, a person or persons to occupy such gatehouse and perform such functions on behalf of Declarant as Declarant, in its sole discretion, deems appropriate, including but not limited to monitoring traffic and facilitating access by authorized persons to Lots which are under construction. Any such person employed or retained by the Declarant shall under no circumstances be responsible for providing security to any persons or property within the Properties. During the Development Period, the Declarant may elect to share the use and occupancy of the gatehouse with the Association on such terms as Declarant may elect. At such time as Declarant elects to assign control of the gatehouse to the Association, the Association may, but shall have no obligation to, staff or otherwise use the gatehouse for such purposes as the Board deems appropriate; however, at no time shall the Declarant or the Association have any obligation to staff or otherwise continue any prior use of the gatehouse. Further, in accordance with the development agreements between the Declarant and the City of Frisco, Texas the gates are to be left open from 7:00 AM to 7:00 PM unless the gatehouse is manned. In addition, the Declarant reserves the right to keep the gates open and the gatehouse unmanned during periods of time that any residences are under construction within the Properties.

4.10. Private Streets. In accordance with the Zoning Ordinance, all streets within the Properties which are conveyed to the Association as a part of the Common Properties as set forth in Section 5.1, and the City of Frisco, Texas shall have no responsibilities for maintenance of such streets. The following provisions apply to the use, maintenance, operation and ownership of private streets located within the Properties which comprise a portion of the Common Properties:

(a) In order to continue to continue to have the private streets, the Association must continue to exist and the Association shall own and be responsible for the maintenance of private streets and appurtenances thereto such as alleys, storm sewers, curbs and other improvements within the private streets. The Association shall collect Assessments required to maintain the private streets and appurtenances thereto.

(b) The Association must establish a reserve fund and maintain same for the maintenance of the private streets and Common Properties. This reserve fund shall not be

commingled with any other Association funds. The reserve fund is subject to approval by the City as to the amount thereof and method of accumulating funds for the reserve fund. The Association shall maintain the reserve fund in accordance with the reserve fund study which has been approved by the City of Frisco. Annual reviews of the status of the reserve fund shall be performed by a certified public accountant firm to verify compliance with the approved reserve study. A copy of this review shall be submitted to the City of Frisco Finance Department for review if the Specific Use Permit included within the Zoning Ordinance for the development and maintenance of private streets is revoked or if the private streets are otherwise converted to public streets, the reserve fund shall become the property of the City of Frisco in accordance with the conversion process set forth in the Zoning Ordinance.

(c) Each Owner, by acceptance of any interest in a Lot, acknowledges and agrees to the following:

(i) All streets within the Property are private and are owned and maintained by the Association (or will be owned by the Association upon dedication to the Association by Declarant) and City has no obligation to maintain or reconstruct the private street.

(ii) The City may, but is not obligated to, inspect the private streets and require repairs necessary to ensure that the same are maintained to City standards.

(iii) The Association may not be dissolved without the prior written consent of the City Council of the City of Frisco, Texas, which consent shall not be withheld by the City if it determines that an adequate reserve fund exists.

(iv) The City will notify the Association of violations of the private street regulations set forth in the Zoning Ordinance. Failure to bring the Properties into compliance with the regulations may cause the City to revoke the specific approval or the Specific Use Permit for the Private Street Development and take action as is permitted in accordance with Section 7.02(18)(a)(5) of the Zoning Ordinance as same may be modified or amended from time to time.

(v) The City shall have all lien, assessment and/or enforcement rights granted in this Declaration to the Association and the City shall have the ability to enforce the liens and assessments and avail itself of any other enforcement actions available to the City pursuant to State and/or City law or regulations. Under no circumstances shall the City be liable to the Association or any Owner or their respective heirs, executors, administrators, devisees, personal representatives, successors or assigns for any maintenance, construction or acts, negligent or otherwise, relating in any manner to maintenance of the private streets or for failure to perform such maintenance, construction or act.

(vi) No provision of this Section 4.10 or other section of this Declaration pertaining to the maintenance of the private streets or the reserve fund may be amended without the written consent of the City.

(d) If the Association fails to carry out its duties as specified in the Zoning Ordinance, the City or its lawful agents shall have the right and the ability after due notice to the Association, to perform the duties required by the Zoning Ordinance or any other ordinance, regulation or agreement with the City in order to bring the Association into compliance. Therewith, the City or its lawful agents shall have the right and ability, after due notice to the Association to assess the Association for the full amount owed and/or assess the Owners on a prorated basis for all costs incurred by the City in performing said duties if the Association fails to do so and said assessments shall constitute a lien, in favor of the City, upon the property which the assessment is made.

(e) Certain City services may not be provided within or to the Properties. The services that may not be provided include, but are not limited to: police enforcement of traffic and parking ordinances and preparation of accident reports.

(f) The Association shall provide unrestricted access to emergency vehicles, utility personnel, the U.S. Postal Service and governmental employees, agents or representatives in pursuit of their official duties. Access codes shall be provided to emergency personnel.

4.11. Powers and Duties. The affairs of the Association shall be conducted by its Board. The Board, for the benefit of the Association, the Properties and the Owners and Residents, may provide and may pay for, out of the assessment fund(s) provided for in Article X, one or more of the following:

A. Care, preservation and maintenance of the Common Properties, other real property located outside the Common Properties the maintenance of which benefits the Association, and the furnishing and upkeep of any desired personal property for use in or on the Common Properties;

B. Recreational and social programs and activities for the general benefit of the Owners and Residents and programs which are designed only for separately identifiable subgroups of Owners or Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;

C. Taxes, insurance and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to the Common Properties;

D. The services of any Person (including the Declarant and any Affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association. The Board is specifically authorized to hire and employ one or more managers, secretarial, clerical, staff and support employees. The Board is specifically authorized to engage personnel (such as ad valorem tax consultants and computer operators) and equipment (such as computers, software and electronic communication and transmission devices), and to administer the collection of assessments described within Article X;

E. Legal and accounting services and all costs and expenses reasonably incurred by the Architectural Review Committees; and

F. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

G. To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

H. To enter into agreements or contracts with insurance companies, taxing authorities, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Properties; (ii) monthly escrow and impound payments by a mortgagee regarding the assessment, collection and disbursement process envisioned by Article X; (iii) utility installation, consumption and service matters; and (v) the escrow or impounding of monies sufficient to timely pay the Base Assessment applicable to any Lot;

I. To borrow funds secured by such assets of the Association as deemed appropriate by the lender and the Board;

J. To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association,

K. To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;

L. To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time and to enter into concession agreements regarding products and services within the Common Properties;

M. To prepare an annual operating budget and to make available for review by each Owner at the Association offices within ninety (90) days after the end of each Fiscal Year an annual report;

N. Pursuant to Article VI, to adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency; and

O. To enforce the provisions of the Governing Documents and to enjoin and seek damages from any Owner or Resident for violation of any such provisions. The Board is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fines" system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, and escalated fines for repeat offenders, which, when pronounced, shall constitute a permitted individual Lot Owner assessment secured by the continuing Payment and Performance Lien herein established.

The Association may: (i) lease equipment from the Declarant; (ii) contract with the Declarant concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are: generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties: and, as to professional management contracts, terminable by the Association at any time for any reason whatsoever and without penalty upon furnishing at least ninety (90) days advance notice thereof to Declarant. The Board shall not be required to solicit bids from unrelated third parties before entering into any contract with the Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with the Declarant (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

4.12. Board Powers. The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association without a vote of the membership unless otherwise provided by the Governing Documents. In the event or if for any reason the Board is deemed not authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority under Section 15.1, to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

4.13. Maintenance Contracts. The Board shall have full power and authority to contract with any Owner or Resident (including, without limitation, the Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof; such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

4.14. Liability Limitations. Neither any Owner or Resident nor the directors and officers and managers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another Owner or Resident, whether such other Owner or Resident was acting on behalf of the Association or otherwise. Neither the Declarant, the Association, its directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. The Declarant, the Association or any other Person liable to make such repairs or maintenance shall not be liable for any personal injury or other

actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

4.15. Reserve Funds. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.

4.16. Patrol Services. The Association may, but shall not be obligated to, maintain or support or contract for the provision of patrol services within the Properties. To the extent that such services are provided, such services are provided solely for the purpose of monitoring activities or conditions affecting the Common Properties (including, but not limited to private streets), and are not for the purpose of monitoring conditions or activities affecting Lots. Neither the Association, the original Declarant nor any successor Declarant, shall in any way be considered insurers or guarantors of safety within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate patrol services or of ineffectiveness of any such measures undertaken. **No representation or warranty is made that any guard house, guard gate, gate system, fire protection system, burglar alarm system or other monitoring system or measure cannot be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants and Residents, that the Association, its Board of Directors and committees, Declarant, and any successor Declarant, are not insurers of safety and that each Person using the Properties assumes all risks of personal injury, death and loss or damage to property, including Dwelling Units and the contents of Dwelling Units, resulting from acts of third parties.**

4.17. Communication Systems. The Board shall have full power and authority to enter into one or more franchise or similar type agreements affecting the Properties with one or more communications companies for the provision of intranet and/or internet service communication systems. The Board shall have the right and power in such agreement or agreements to grant to such company or companies the uninterrupted right to install and maintain communications equipment and appurtenances within any public utility easements or rights-of-way located upon the Properties now or in the future. The Board does hereby reserve unto the Association, its successors and assigns, the sole and exclusive right in perpetuity to obtain and retain all fees, income, revenue and other things of value paid or to be paid by such companies pursuant to any such agreements between the Association and such communication companies.

Article V MAINTENANCE

5.1. Association's Responsibility. The Association shall maintain the Areas of Common Responsibility and shall keep it in good, clean, attractive, and sanitary condition, order,

and repair, pursuant to the terms and conditions hereof. Maintenance obligations of the Association shall include, but not necessarily be limited to, the following:

(a) except as provided at Section 5.2, below, all landscaping and other flora, open space, structures, and improvements, including, without limitation, walls, fences, private streets, sidewalks, medians, streetlights, signage, and entrance gates and gatehouses, entrance signage, gatehouse and other entrance features, if any, situated upon the Common Properties; provided, however, certain walls, fences, sidewalks, flora, trees, open space and landscape irrigation and sprinkler systems lying adjacent to a Lot or between a Lot line and the back of the curb of any private streets within the Properties shall be maintained by the Owner of the respective Lot as set forth at Section 5.2, below;

(b) except as provided at Section 5.2, below, landscaping and other flora within any right-of-way within the Properties; provided, however, as set forth at Section 6.2, certain landscaping and other flora lying between the lot line of any Lot and the back of the curb of any private street adjacent thereto shall be maintained by the Owner of the applicable Lot;

(c) except as provided at Section 5.2, below, routine maintenance of the irrigation and sprinkler system(s), if any, serving the Common Properties (the Association shall have no responsibility for maintenance and, of repairs to or replacement of the irrigation system lying within the boundaries of any Lot except to the extent expressly assumed by the Board); provided, however, the underground landscape irrigation and sprinkler system lying within the Common Properties and between a lot line and the back of the curb of any private street located within the Properties shall be maintained by the Owner of the respective Lot;

(d) drainage inlets and other storm sewer drainage facilities located within the Properties shall be maintained by the City of Frisco, Texas, to the extent that the City agrees to undertake such maintenance; provided, however, if they refuse to undertake maintenance of drainage inlets and other underground storm sewer facilities located within the Properties then this maintenance obligation may, if the Association so elects through its Board, become a responsibility of the Association and the cost of such maintenance shall constitute a Common Expense;

(e) such portions of any additional property as may be dictated by this Declaration, any Supplemental Declaration, or any contractor agreement for maintenance thereof entered into by the Association; and

(f) the maintenance of vacant Lots as set forth at Section 21 of Exhibit B attached hereto.

The Area of Common Responsibility described above shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant, so long as Declarant owns any property subject to this Declaration.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement (to the extent such is the responsibility of the Association) of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants or agreements with the owner(s) thereof.

In the event that the Association shall fail to perform its responsibilities hereunder, the City shall be authorized to assume such maintenance responsibilities and to assess all costs thereof against the Owners and their Lots in equal shares, such assessments constituting a lien against each Lot which may be collected in the same manner as the lien for any assessment under this Declaration.

5.2. Owner's Responsibility. Each Owner shall be responsible for maintaining his or her Lot and all Structures, driveways, sidewalks, parking areas and other Improvements comprising the Lot. In addition, each Owner shall be responsible for maintaining certain Improvements which lie within the Common Properties, all of such Improvements including landscaping and other flora therein shall be maintained in first class condition, order and repair. Improvements and Structures which are to be maintained by the Owner of the Lot include, but are not limited to, the following:

(a) Retaining Walls and fencing thereon, which Retaining Walls shall be maintained by the Owner of the Lot upon which the Retaining Wall is located, all as more specifically set forth at Section 13.6 herein below. The Owner of the Lot upon which a Retaining Wall is located shall maintain the Retaining Wall regardless of who originally built the Retaining Wall;

(b) Sidewalks, landscape irrigation and sprinkler systems, flora and fauna which lie in the parkway between a lot line and the back of the curb of the private street within the properties adjacent thereto;

(c) Any fencing, of any nature, whether or not such fencing was initially installed by the Declarant or others, which fencing lies on or adjacent to the boundary line of any Lot, even though such fencing may lie within such Common Properties. Generally, the only fencing within the Properties which will be maintained by the Association will be the fencing installed by Declarant which located within Common Areas A-4, E-1 and along the one hundred fifty foot wide Texas Power and Light Company easement (along the property line of Lots E-3, E-4, E-13 and street right of way line of Sondra drive and Mountainwood lane);

(d) When maintenance obligations of an Owner of a Lot are described as obligations to maintain Improvements including, sprinkler systems, sidewalks and flora which lie

between the lot line and the back of the curb of any private street within the Properties it is intended to include parkway areas which lie between a lot line and a back of curb of a private street with respect to the side lot lines and front lot lines of a corner Lot. However, if there is a Common Area identified on the Plat as a Common Area and the Common Area lies between a Lot and a private street then the Association, and not the Lot Owner, shall maintain the platted Common Area and Improvements therein; and

(e) Additional maintenance responsibilities of each Owner are set forth in the initial Use Restrictions and Rules which are set forth on Exhibit "B" attached hereto. In addition, the Declarant and the Board, as applicable, may adopt additional specific maintenance guidelines and standards for the maintenance and preservation of Structures and Improvements located on Lots within the Properties and the Declarant and/or the Board may adopt rules and regulations governing the enforcement of maintenance guidelines and regulations and the assessment of costs incurred in connection with such enforcement against the Lot and the Owner that are the subject of such enforcement activities in accordance with Section 10.7 and as set forth in the following paragraph.

In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibilities, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 10.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Except as otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The private streets shall be maintained to the standards of similarly situated public streets within the City of Frisco. Neither the Association nor an Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own, except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Article VI INSURANCE AND CASUALTY LOSSES

6.1. Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect if reasonably available the following types of insurance:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Properties, if any, and on other portions of the Common Properties to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable

cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(b) Commercial general liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(c) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(d) Directors and officers liability coverage;

(e) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board’s best business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(f) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

Premiums for all insurance on the Common Properties shall be Common Expenses and shall be included in the Base Assessment.

6.2. Policy Requirements. The Association may arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Section. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful conduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 10.7.

All insurance coverage obtained by the Board shall:

(a) be written with a company authorized to do business in the State of Texas;

(b) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Properties shall be for the benefit of the Association and its Members;

(c) not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(d) contain an inflation guard endorsement; and

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall be required to use reasonable efforts to secure insurance policies which provide:

(a) waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(b) waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(c) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(d) an endorsement excluding individual Owners' policies from consideration under any "other insurance" clause;

(e) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(f) a cross liability provision; and

(g) a provision vesting in the Board exclusive authority to adjust losses;

6.3. Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Properties shall be repaired or reconstructed unless the Board elects otherwise.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments against the Lot Owners to cover the shortfall.

Article VII
NO PARTITION

Except as permitted in this Declaration, there shall be no judicial partition of the Common Properties. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

Article VIII
CONDEMNATION

If any part of the Common Properties shall be taken (or conveyed in lieu of and under threat of condemnation by the Board by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Properties on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Properties to the extent available, unless the Board decides otherwise. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.3 regarding sufficiency of funds for the repair of damage or destruction, shall apply to such costs.

(b) If the taking does not involve any improvements on the Common Properties, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

Article IX
ANNEXATION AND WITHDRAWAL OF PROPERTY

9.1. Annexation Without Approval of Membership. Declarant may, at its discretion, upon acquisition of the Supplemental Land unilaterally and without the joinder or approval of any Member, subject all or any portion of the Supplemental Land to the provisions of this Declaration. Declarant may assign this right to annex property, provided that such assignment is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property subject to annexation in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the Public Real Estate Records of Denton County, Texas. Such Supplemental Declaration shall not require the consent of or the joinder of any other Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Such Supplemental Declaration shall set forth the development standards and protective covenants to which the added or annexed Supplemental Land shall be subject, and such development standards and protective covenants may contain additions, deletions, and modifications from those contained in this Declaration as may be necessary to reflect the different character, if any, of the added or annexed portion of the Supplemental Land. Further, such Supplemental Declaration may contain additions, deletions or modifications to this Declaration for purposes of defining the added or annexed Supplemental Land or portion thereof. Except as set forth above, such Supplemental Declaration shall not revoke, modify or change any other provision contained within this Declaration applicable to the then existing Properties, nor shall such Supplemental Declaration revoke, modify, or add to the development standards and protective covenants established by this Declaration for the then existing Properties, nor revoke, modify or add to the development standards and protective covenants established by previously filed Supplemental Declarations as they apply to previously added or annexed Supplemental Land, unless in each instance the Declaration is amended as required by the terms governing amendments.

9.2. Withdrawal of Property. So long as it has a right to annex additional property pursuant to Section 9.1, the Declarant reserves the right to amend this Declaration for the purpose of removing property from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such withdrawal shall not require the consent of any Person, except the owner of the property to be withdrawn, if other than Declarant. Declarant may elect to add or subject none or only a part of the Supplemental Land to this Declaration and the Properties and may elect to remove some or all of the Supplemental Land from the land included as Supplemental Land as and if Declarant so desires.

9.3. Merger or Consolidation. Upon approval by or request of the Declarant, the Association may be merged or consolidated into or with another Association, including, but not limited to the Association governing the Supplemental Land. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the Property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, restrictions and development standards established by this Declaration and any Supplemental Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however shall effect any revocation, change or addition to the covenants, restrictions and development standards established by this

Declaration or any Supplemental Declaration pertaining to the Properties except as approved by Declarant.

9.4. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property subject to this Declaration or subject to annexation under Section 9.1.

9.5 Declaration of Covenants, Conditions and Restrictions for Supplemental Land. It is the desire of Declarant and HKW Land Holdings, L.P., a Texas limited partnership (“HKW Land”) as the Owner of the Supplemental Land to provide for the execution and recordation of a Declaration of Covenants, Conditions and Restrictions (the “Supplemental Land Declaration”) whereby covenants, conditions, restrictions and easements materially similar to those of this Declaration will be imposed upon the Supplemental Land. For purposes of this Declaration, the land which was initially restricted by the Original Declaration will be referred to herein as the “Properties”. Declarant and HKW Land as the Owner of the Supplemental Land hereby declare that all of the Supplemental Land will hereafter be made subject to the Supplemental Land Declaration in accordance with this Section 9.4 and that the Supplemental Land shall be held, sold, transferred, used and conveyed subject to the Supplemental Land Declaration as soon as same is recorded and that the easements, restrictions, covenants and conditions of the Supplemental Land Declaration shall run with the title to the Supplemental Land and each and every portion thereof. HKW Land will be the Declarant under the Supplemental Land Declaration. The Declarant hereunder will not be the Declarant as to the Supplemental Land and this Declaration will not encumber the Supplemental Land except as provided in the Supplemental Land Declaration. In consideration of ten dollars and other good and valuable consideration HKW Land and the Declarant agree as follows:

(a) The Supplemental Land will be subjected to a Declaration and Design Guidelines which are materially the same in all respects to this Declaration and Design Guidelines which are in effect as of the date of this Declaration.

(b) Lots developed within the Supplemental Land may be developed and platted with no less than fifty foot (50’) frontage on streets or may be fifty foot (50’) lots.

(c) Base Assessments within the Supplemental Land will be determined and assessed in the same manner as is determined and assessed for Lots within the Properties. The basis and standards for Base Assessments within the Supplemental Land will, in all material respects, be the same as that used for similar sized Lots within the Properties. No portion of the Supplemental Land will be assessed with any Base Assessments and none shall accrue until that portion of the Supplemental Land has been platted as a residential Lot. Only platted residential Lots within the Supplemental Land will be assessed with Base Assessments.

(d) An owner’s association will be established under the Supplemental Land Declaration in accordance with articles of incorporation and bylaws which are materially the same as those in existence for the Association. It is anticipated that promptly after the Class B Control Period has expired under both this Declaration and the Supplemental Land Declaration the Association will merge with the association established under the Supplemental Land Declaration.

(e) Votes of Members of the Association who own Lots within the Supplemental Land will be allocated to the Lots within the Supplemental Land in the same manner as for the Properties, with the exception that no vote will be allocated to any portion of the Supplemental Land until that portion of the Supplemental Land has been platted as a residential Lot or Lots.

(f) As set forth in the Design Guidelines for the Supplemental Land, from time to time, no street, lot, grading, utilities, common area improvements or other improvements shall be developed or constructed on the Supplemental Land without having been reviewed and approved, in writing, as required pursuant to the provisions of the Design Guidelines for the Supplemental Land. In general, the Design Guidelines for the Supplemental Land will set forth a procedure for the approval of plans for the development of streets, lots, grading, utilities, common area improvements, parks, greenbelts and/or other land improvements on the Supplemental Land. The streets, lots, grading, utilities, common area improvements, parks, greenbelts and other land improvements on the Supplemental Land will be developed in a manner consistent with and in keeping with the common area developed within the Properties so that there is common area fencing, perimeter fencing, road quality, greenbelts, common area improvements and amenities which are commensurate in quality and quantity to that found in the Properties.

(g) The Design Guidelines, the method of allocation of and level of assessments, the method of allocation of votes and the easements created and existing under the Declaration and the Supplemental Land Declaration will not be amended or changed without the prior written approval of the Declarant and the declarant under the Supplemental Land Declaration. No approval will be unreasonably withheld or delayed and any disapproval will detail the reasonable basis for disapproval. Initially, HKW Land will be the Declarant under the Supplemental Land Declaration.

(h) A budget (including any reserve budget) will be established and approved as provided under this Declaration and the Supplemental Land Declaration which budget will detail the Common Expenses of operating the two associations and the Common Properties created under each Declaration. After lots have been developed on the Supplemental Land, Assessments collected will be pooled between the two Associations (one for the Supplemental Land and this Association under this Declaration) to be used to operate Common Properties and to pay Common Expenses within the Properties and within the Supplemental Land; provided, however that there will be no Common Expenses and no assessments attributed to the Supplemental Land until such time as residential lots have been developed thereon. After lots have been developed on the Supplemental Land any budget affecting the Supplemental Land will be subject to approval by the declarant under the Supplemental Land. No approval will be unreasonably withheld or delayed and any disapproval will detail the reasonable basis for disapproval.

Article X **ASSESSMENTS**

10.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 10.6; and (c) Specific Assessments as described in Section 10.7. Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner of any Lot, by acceptance of a Deed therefore, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot so as to have affected the purchase price) to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies), assessments as are set forth in this Declaration.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Texas law) as computed from the date the delinquency first occurs, reasonable late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 10.8. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association or its designee shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments, and in such case, may include a time-price differential charge, in the Board's discretion. Unless the Board otherwise provides, the annual Base Assessment shall be due and payable in advance in two installments on the first day of each of February and July of each fiscal year and shall be considered delinquent if not paid within the time specified by the Board. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The Board may further prescribe: (a) procedures for collecting Base Assessments or installments thereof in advance from new Owners out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had a history of being untimely in the payment of assessments.

Initially, the Association may assess and collect the following fees and closing assessments, none of which shall apply to the Base Assessments payable with respect to a Lot:

(a) an initial capitalization assessment of \$1,000 per Lot to be paid by the initial purchaser (other than a Builder) of any Lot. This initial capitalization assessment will be collected at the closing of the sale to the initial Owner of the Lot. In other words, if Declarant sells a lot to an Owner other than a Builder, the assessment is collected at the closing of the Lot. However, if Declarant sells a lot to a Builder, the assessment is collected when the Builder sells the Lot; and

(b) a transfer fee of \$500 at each subsequent Lot closing (collected each time a Lot re-sells) after the initial closing to a Lot Owner. If the initial capitalization assessment is collected at the closing then the transfer fee is not collected until all subsequent closings. The Board (or the Declarant during the Class B Control Period) may adjust (increase or decrease) this transfer fee from time to time in its reasonable discretion.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other Persons for payment of Common Expenses.

10.2 Purposes of Assessments The assessments levied by the Association shall be used for the purposes of promoting the comfort, recreation, convenience, welfare and quality of life of the Owners and Residents of the Properties and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of greenbelt easements, walkways, common green, hike and bike trails, ponds, recreational areas and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: the payment of taxes on the Common Properties and insurance in connection with the Common Properties; the payment for utilities and the repair, replacement and additions of various items within the Common Properties; 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; carrying out the duties of the Board of Directors of the Association as set forth in this Declaration; and carrying out the other various matters set forth or envisioned herein or in any Supplementary Declaration related hereto. The items and areas described above are not intended to be exhaustive but merely illustrative.

10.3. No Declarant Obligation for Assessments. During the Class "B" Control Period, Declarant shall have no obligation to pay Base Assessments on its unsold Lots. The amount equal to the difference between the amount of assessments levied and collected on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year shall constitute a "shortfall." Declarant may, but shall have no obligation to, pay all or a portion of the Shortfall and subsidize the budget of the Association by making a "Subsidy Loan" (herein so called) which Subsidy Loan, plus interest thereon is to be repaid to the Declarant in accordance with the provisions of Section 10.4(a).

10.4. Computation of Base Assessment.

(a) At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a

capital contribution to establish a reserve fund in accordance with a budget separately prepared, if required by Section 10.5. The initial Base Assessments on improved Lots are set forth at Schedule I attached hereto and made a part hereof. Base Assessments are to be established based, generally, upon the size of the various Lots with the initial Base Assessments being determined as set forth on Schedule I. If the Board determines to increase the Base Assessment then the Base Assessments on each of the Lots shall be increased proportionately. For instance, by way of example only, if the Base Assessment as to a group of smaller Lots is \$100.00 per month and as to a group of medium size Lots is \$150.00 a month and it is determined that the Base Assessment will be increased by 10% then the Base Assessment as to the smaller Lots will increase by \$10.00 per month and the Base Assessment as to the medium size Lots will increase by \$15.00 per month. Nothing set forth on Schedule I or in this Section 10.4 (a) is intended to affect the provisions of Section 10.4(b) wherein outside limitations on increases in Base Assessments are discussed.

Base Assessments shall be levied equally on all Lots subject to assessment under Section 10.12, except that in the Board's discretion, Lots upon which construction of a foundation has been commenced ("improved Lots") may be assessed at a higher rate than Lots without a foundation in process ("unimproved Lots"). A lot shall be deemed to be an "improved Lot" as of the date that construction of a foundation thereon is commenced. In addition, the Board may, in its discretion, assess lots held by a Class "A" Member for at least twelve months without a foundation in process thereon as an improved Lot or, if the Board so elects, at a higher rate than other unimproved Lots but not as high as an improved Lot. If any two or more Lots identified on the Plat as of the date of execution of this Declaration shall ever be re-platted so as to constitute fewer Lots then these re-platted Lots shall continue to be assessed as the number of Lots which originally existed on the original Plat of the Properties. So, by way of example only, if two Lots identified on the Plat are re-platted into one Lot then the new Lots shall continue to pay assessments payable with respect to two Lots. Similarly, if three Lots are re-platted into two Lots then those two Lots shall be responsible for the payment of assessments which would be payable with respect to the original three Lots identified on the Plat. The Board may fix the annual Base Assessment for each Lot without a vote of the membership, provided the Base Assessment does not exceed the limitation on assessments (as such limitation may have increased) then applicable as set forth in subsection 10.4(b) below; otherwise, the Base Assessment shall be subject to the approval of Members holding at least 51% of the Class "A" votes represented in person or by proxy at a meeting duly called for that purpose and the consent of the Class "B" Member, if any.

In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board may take into account the number of Lots subject to assessment under Section 10.12 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

During the Class "B" Control Period, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy as contemplated at Section 10.3. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant. Any such subsidy shall be deemed

a loan ("Subsidy Loan") from Declarant to the Association, which subsidized amounts shall bear interest from the date of funding until the date paid at a rate of interest set forth below, as simple interest, which interest will cumulate from year to year until paid and which Subsidy Loan shall be evidenced by a Promissory Note from the Association to the Declarant which shall be payable as follows: Interest on each Subsidy Loan will accrue from the date of funding of each such loan at a variable rate of interest (the "Fluctuating Rate") calculated on the basis of a year consisting of 360 days, with the Fluctuating Rate to be equal to the lesser of (i) the Maximum Lawful Rate (as hereafter defined); or (ii) the "prime rate" as announced, published and so designated in the Money Rates Section of the *Wall Street Journal* from time to time or if that rate is no longer published or reported then at the "prime rate" as is generally recognized by Federally insured banks as the "prime rate".. The principal plus accrued interest of the Subsidy Loan(s) shall be paid in ten (10) equal annual installments so as to fully amortize the Loans over ten (10) years, commencing on the date of expiration of the Class "B" Control Period so that the entire principal amount plus interest shall be completely paid in full on the tenth anniversary of the end of the Class "B" Control Period. Each annual payment of principal plus accrued interest on the Subsidy Loan shall be paid on the anniversary date of the Loan with the first installment due on the first anniversary date of the Loan and with subsequent installments being due on each anniversary date thereafter until the Loan is fully paid. Such subsidies annually shall be disclosed as a line item in the Common Expense budget and the total Subsidy Loan plus accrued and unpaid interest shall be carried as a liability of the Association and shall be made known to the membership.

As used herein, the term "Maximum Lawful Rate" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Declarant in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Declarant to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

All past due installments of interest and/or principal shall, if permitted by applicable law, bear interest at the Maximum Lawful Rate, or if no Maximum Lawful Rate is applicable hereto, then at the rate of eighteen percent (18%) per annum.

The Note evidencing the Subsidy Loan shall contain such other terms and conditions, including but not limited to, those pertaining to attorneys' fees and collection costs, default, prepayment and other matters as may be reasonably required by the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. If the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year, until the new budget is determined.

(b) Limitation on Base Assessments. Although the Board may elect to levy assessments in a lesser amount, the annual Base Assessment for the Association's 2010 fiscal year shall not exceed the equivalent of \$1,500 semiannually per unimproved Lot and \$1,500

semiannually per improved Lot. The maximum Base Assessment which may be levied in any subsequent fiscal year without approval of the Members as set forth in subsection (a) above shall be determined by increasing the maximum Base Assessment which could have been levied for the previous fiscal year by the greater of twenty percent (20%) or the percentage increase in the Consumer price Index for All Urban Consumers (Dallas-Fort Worth Area; Base: 1982-1984 = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI"). In the event the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department or bureau or agency or shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculations envisioned herein, or in the event no such alternative index exists or a dispute arises concerning the selection of such alternative index, the Board shall have the final right and power to select and/or formulate such an alternate index. The maximum Base Assessment referenced in this subsection (b) shall be cumulative or, in other words, by way of example only and not by way of limitation, if the maximum Base Assessment per Lot per month in a given year was set at \$100.00 (even though the actual Base Assessment assessed against the Lot was \$80.00) then in the subsequent year the maximum Base Assessment may be increased by twenty percent (20%) or the increase in the CPI, whichever is greater. Accordingly, the maximum Base Assessment shall not be measured against the actual Base Assessment for the prior year but permitted increases shall be measured against the prior year's maximum Base Assessment regardless of the prior year's actual Base Assessments.

10.5. Reserve Budget and Capital Contribution. The Board shall annually prepare a reserve budget for maintenance of private streets and other improvements to the Common Properties which takes into account the number and nature of any replaceable assets which the Association owns or for which it is otherwise responsible, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments over the budget period. The reserve fund shall not be co-mingled with other funds of the Association. The Association shall cause an annual review to be performed by a certified public accounting firm to verify the amount in the reserve fund and shall provide a copy of the review to the City of Frisco. If at any time the private streets are dedicated to the City of Frisco or converted to public streets, the City shall be entitled to that portion of the monies in the reserve fund allocated to maintenance, repair and replacement of the streets so dedicated. The reserve budgets will be based upon the initial construction value of the private streets. Notwithstanding the foregoing, the reserve fund shall have a balance commencing upon the sale of a Lot to a third party (residence) but no later than one year after the recordation hereof; and thereafter, at all times. The reserve fund shall be equal to the total replacement cost of the private streets and other improvements divided by the average life expectancy of those improvements times the age of the improvements.

10.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. In addition, Special Assessments may be levied at any year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction,

unexpected repair or replacement of a capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto or for any unusual or emergency purposes (including without limitation those matters arising out of litigation and/or judgments). Expenses paid with Special Assessments may include capital expenses but are not limited thereto and may cover other unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be levied equally on all Lots within the Properties. Special Assessments are not limited by the limitations set forth with respect to Base Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board, and if so determined by the Board, may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

10.7. Specific Assessments. The Board shall have the power to levy a Specific Assessment against any Lot or Lots for monetary fines authorized by this Declaration or the By-Laws, and for expenses of the Association incurred in providing benefits, items, or services not provided to all Lots within the Properties, whether such expenses are incurred (a) upon request of the Owner of a Lot for specific items or services relating to the Lot, or (b) as a consequence of the conduct of less than all Owners, their tenants, invitees, or guests. The Association may also levy a Specific Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules, provided the Board gives prior notice to the Lot Owner and an opportunity for a hearing in accordance with the By-Laws. In addition, Specific Assessments may be levied against individual Owner to reimburse the Association for extra or unusual costs incurred for items such as, but not limited to, maintenance and repairs to portions of the Properties caused by the willful or negligent acts of the individual Owner or a Resident of such Owner's Lot or to remedy, cure or minimize problems caused by, or as a result of, violations of these Covenants by an Owner or Resident of such Owner's Lot. In addition, Specific Assessments may be levied as individual assessments and fines levied against an individual Owner for violation of rules and regulations by the Owner or a Resident of his Lot pertaining to the Association and/or the Common Properties.

10.8. Effect of Nonpayment of Assessment: the Personal Obligation of the Owner: the Lien: and Remedies of Association.

A. Effective as of, and from and after the filing of this Declaration, there has existed and shall continue to exist a self-executing and continuing contract Payment and Performance Lien (herein so called) and equitable charge on each Lot in favor of the Association and City, as such lien rights and benefits inure to said City under Section 15.10 hereof, to secure the full and timely payment of each and all assessments and all other charges and monetary amounts and performance obligations due hereunder. Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any assessment, charge or fine or any part thereof levied by the Association against any Lot or the Owner or a Resident thereof is not paid on the date(s) when due, then the unpaid amount of such assessment, charge or fine shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the highest lawful rate of interest per annum and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner/Member/Resident which shall bind such Lot in the hands of

the Owner and Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The personal obligation of an owner to pay such assessment or other monetary obligations, however, shall remain such Owner's personal obligation and shall not pass to the Owner successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any assessment provided for herein by non-use of the Common Properties or abandonment of the Lot. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

B. If any assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent assessment, charge or fine may bear interest, in the Board's discretion, from and after the date when due until fully paid at a rate determined by the Board, but not to exceed the highest lawful rate of interest per annum. If applicable state law provides or requires an alternate ceiling under applicable Texas civil statutes, then that ceiling shall be the indicated rate ceiling. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid assessment, charge, fine or any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association.

C. The Association may, at its discretion but subject to all applicable debt collection statutes prepare and file a document in the public records of Denton County, Texas which specifically identifies the unpaid assessments, charges or fines and that the fact that a lien exists to secure the repayment thereof. However, failure to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.

D. All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such

provision shall be due, shall involve transcending the limit of validity prescribed bylaw, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest or if such excessive interest exceeds the unpaid balance of the actual Base Assessment or other assessments hereof and such other indebtedness, the excess shall be refunded to Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

10.9 Power of Sale. The lien described within the preceding Section is and shall be a contract Payment and Performance Lien and may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 (V.A.T.S), as it may be amended, in like manner of any deed of trust on real property. Each Owner hereby grants to the Association, whether or not it is expressed in the deed or other instrument conveying such Lot to the Owner, a power of sale to be exercised in accordance with Tex. Prop.Code Ann. Section 51.002 (Vernon 1984), as it may be amended.

10.10. Subordination of the Lien to Mortgages. The lien securing the payment of the assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

A. bona-fide, arms length, third party first mortgage or deed of trust liens for purchase money and/or home improvement purposes placed upon a Lot, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;

B. liens for taxes or other public charges as are by applicable law made superior to the Association's lien; and

C. such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien;

provided, however, such subordination shall apply only to: (i) the assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien; (ii) the permitted lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Such sale shall not relieve such Lot from liability for the amount of any

assessment thereafter becoming due nor from the lien of any such subsequent assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay assessments and/or to hinder the Association in performing its functions hereunder.

10.11. Exempt Property. The following property otherwise subject to this Declaration shall be exempted from any assessments, charge and lien created herein:

- A. All properties dedicated to and accepted by a local public or governmental official;
- B. Common Properties; and
- C. Exempt Property.

10.12. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day: (a) in which the Lot is made subject to this Declaration, or (b) in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot. The Base Assessments shall be due and payable on the date specified by the Association and each Special Assessment and Specific Assessment, if any, shall be due on the date specified by the Association and same shall be automatically delinquent, with no further notice thirty (30) days after the date set for payment of such Base Assessment, Special Assessment, or Specific Assessment, as applicable. The Board shall use reasonable efforts to provide each Owner with an invoice statement of the appropriate amount due, but any failure to provide such notice shall not relieve any Owner of the obligation to pay assessments. The Board may further prescribe: (a) procedures for collecting advance regular Base Assessments and other assessments from new Owners out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had a recent history of being untimely in the payment of assessments.

10.13. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

Article XI ARCHITECTURAL STANDARDS

11.1. General. No building, structure, fence, wall or improvement shall be placed, erected or installed upon any Lot and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of landscaping materials) (collectively, the "Work") shall take place except in compliance with this Declaration, the Subdivision Design Guidelines and this Article XI, and

until all plans and specifications have been submitted to and approved by the Committee. Notwithstanding the above, an Owner may repaint the exterior of a structure in accordance with originally approved color scheme and rebuild in accordance with originally approved plans and specifications without first seeking approval. No approval shall be required to remodel, repaint or redecorate the interior of structures on his Lot. However, modifications to the interior of screened porches, patios and similar portions of a Lot visible from outside the Lot shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of an architect or designer, unless otherwise acceptable to the Architectural Review Committee.

This Article shall not apply to the activities of the Declarant nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any portion of the Properties.

11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the Architectural Review Committee (the "Committee"). The members of the Committee may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Committee shall consist of at least three, but not more than five persons. Until one hundred percent (100%) of the Lots shown on the Plat have been conveyed to Class "A" Members and each such Lot has been issued a Certificate of Occupancy, the Declarant retains the right to appoint all members of the Committee who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument executed by Declarant and recorded in the Denton County Deed Records. Upon the expiration of such right, the Board shall appoint the members of the Committee, who shall serve and may be removed at the discretion of the Board.

11.3. Review Standards. In reviewing any application, the Committee may consider, among other things:

- A. quality of workmanship and materials, site dimensions, proper facing of main elevation with respect to nearby streets, in accordance with this Declaration and/or the Subdivision Design Guidelines and/or bulletins;
- B. finished floor elevation and proposed footprint of the dwelling;
- C. conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;

D. the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors to and from the Common Properties;

E. site plan showing all improvements, including retaining walls and a drainage plan (certified and sealed by a licensed professional engineer) showing elevations and grade, both existing and proposed together with finished floor elevations.

F. the other standards set forth within this Declaration (and any amendments hereto), the Design Guidelines, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

The Committee is authorized and empowered (but not obligated) to consider and review any and all aspects of construction, location and landscaping. Also, the Committee is permitted to consider technological advances and changes in design and materials which may or may not be permitted, in accordance with the reasonable opinion of the Committee. The Committee is also authorized to request, receive and transmit cost data to the Board which would enable the Association to carry out its duties address levels of assessments and budgets.

The Committee may require as a condition precedent to any approval of the final plans and specifications, that the applicant obtain and produce a building permit from the City of Frisco, Texas. The Committee is also authorized to coordinate with the City of Frisco in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration and any bulletins or lot information sheets promulgated hereunder. Similarly, the Committee's approval of any plans and specifications does not mean that all applicable building requirements of the City of Frisco have been satisfied.

Each and every Owner and applicant shall use their respective best efforts to commence construction of all improvements approved by the Committee and the City of Frisco, Texas (and any and all other applicable governmental agencies) within sixty (60) days after obtaining all necessary governmental approvals therefor. All projects shall be completed within one (1) year of commencement of construction, unless otherwise approved in writing by the Committee. Upon written request of an Owner, the Committee may extend the time period for completion of the project upon such circumstances, as the Committee deems appropriate, in its sole discretion.

EACH OWNER OF A LOT AND ANY OTHER PERSON PROPOSING TO ALTER IMPROVEMENTS ON A LOT IS STRONGLY ENCOURAGED TO CONTACT THE COMMITTEE TO OBTAIN AND REVIEW THE MOST RECENT SUBDIVISION DESIGN GUIDELINES AND TO DISCUSS WITH THE COMMITTEE, THE ALTERATION PROPOSAL.

11.4. Guidelines and Procedures.

(a) Subdivision Design Guidelines. The Committee shall prepare the initial design and development guidelines and application and review procedures (the "Subdivision Design

Guidelines”) which shall be applicable to all construction activities within the Properties. The Subdivision Design Guidelines shall be subject to the prior written approval of the Declarant and the Committee. The Committee (subject to the prior written approval of the Declarant) may, from time to time, publish, promulgate and amend additional or revised Subdivision Design Guidelines and architectural bulletins which shall also constitute Subdivision Design Guidelines and such Subdivision Design Guidelines shall be explanatory and illustrative of the general intent of the proposed development of the Properties and are intended as a guide to assist the Committee in reviewing plans and specifications. The Committee, with the prior written approval of the Declarant, shall have the sole and full authority to amend the Subdivision Design Guidelines. Any amendments to the Subdivision Design Guidelines shall be prospective only and shall not apply or require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Subdivision Design Guidelines. The Declarant or the Committee, as appropriate, is expressly authorized to amend the Subdivision Design Guidelines to remove requirements previously imposed or otherwise to make the Subdivision Design Guidelines more or less restrictive. The Subdivision Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon location and unique characteristics.

The Association shall make the Subdivision Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties, and all such Persons shall conduct their activities in accordance with such Subdivision Design Guidelines.

The Association or Declarant, as applicable, shall make the Subdivision Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties, and all such Persons shall conduct their activities in accordance with such Subdivision Guidelines. The Committee shall have the right, power and authority to establish and prescribe Subdivision Design Guidelines pertaining to items and topics such as, but not necessarily limited to:

- A. A site plan showing the “footprint” of the building, location of all existing trees (indicate size and type) and proposed improvements, including but not limited to, structures, patios, driveways, parking areas and structures, fences and walls;
- B. Exterior elevations of all proposed buildings and structures;
- C. A description and samples of exterior materials, colors, textures and shapes of all buildings and structures;
- D. Landscape plans, which shall include walkways, fences, walls, details, elevation changes, irrigation and watering systems, vegetation and ground cover (indicating size, spacing and quantity), and the protection and preservation of trees and other existing and introduced vegetation;
- E. Utility connections, including routing of electrical, gas, water, sanitary sewer, telephone cables and pre-wired CATV facilities;

- F. Exterior illumination and location;
- G. Dimensional floor plan of all enclosed spaces and any garages or parking facilities (particularly where the garages face the Street);
- H. Mailbox location and design;
- I. The items described within Section 11.3 above and any other data or information requested or deemed reasonably necessary by the Committee.

PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF THE LOT IS STRONGLY ENCOURAGED TO CONTACT THE DECLARANT OR THE ASSOCIATION OR THE COMMITTEE TO OBTAIN AND REVIEW THE MOST RECENT SUBDIVISION DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT.

(b) Plan Submissions. The Design Guidelines will set forth an outline of the steps to be taken to process the review and approval of plans and specifications by the Committee.

The Committee is authorized and empowered to and shall consider, review and comment on preliminary plans submitted in duplicate on an informal basis to assist Owners, developers, Builders and prospective purchasers of the Lots in complying with these Covenants and to assist in the completion of any feasibility studies undertaken by such Persons. The Committee shall have the right, however, to prescribe reasonable limitations concerning the time, effort and expense likely to be involved in handling such matters on an informal basis. If the preliminary plans and specifications are approved by the Committee, the Owner or the Owner's designated representative will be so advised in writing. If found not to be in compliance with these Covenants, the Subdivision Design Guidelines or architectural bulletins, the Owner or the Owner's designated representative will be so advised in writing containing a reasonable statement and explanation of items found not to comply with these Covenants, the applicable Subdivision Design Guidelines. If the Committee fails to respond within thirty (30) days after the actual date on which a complete (as determined by the Committee in its sole discretion) submission is received, the applicant may give the Committee written notice of such failure to respond, stating that, unless the Committee responds within thirty (30) days of receipt of such notice, approval of the matters submitted shall be presumed. Comments on and approvals of preliminary plans and specifications shall be binding upon the Committee provided that conforming final plans and specifications are submitted within ninety (90) days of such preliminary comments or approvals. The Committee may conditionally approve preliminary plans to allow, among other things, the commencement of construction pending final approval.

Final plans, specifications and surveys shall be submitted in duplicate to the Committee for review and approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the final plans, specifications and

surveys meet the approval of the Committee, one complete set of final plans, specifications and surveys will be retained by the Committee and the other complete set will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these Covenants, the Subdivision Design Guidelines or architectural bulletins, one set of such final plans, specifications and surveys shall be returned marked "Disapproved," accompanied by a reasonable statement and explanation of items found not to comply with these Covenants, the Subdivision Design Guidelines or architectural bulletins. Any modification or change to the approved set of final plans, specifications and surveys 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. If the Committee fails to approve or disapprove such final plans, specifications and surveys within thirty (30) days after the actual date on which a complete (as determined by the Committee in its sole discretion) submission is received, the applicant may give the Committee written notice of such failure to respond, stating that, unless the Committee responds within twenty (20) days of receipt of such notice, then the Committee's approval shall be presumed.

EACH OWNER SHALL SEEK AND OBTAIN AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS AND LOT INFORMATION SHEETS PRIOR TO ACQUISITION OF, AND CONSTRUCTION ON, ANY LOT.

(c) Fees. The Committee may establish and charge reasonable fees for the review of applications hereunder and may require that such fees be paid in advance and in full prior to the review of any application (which may include additional fees for the review of resubmissions of any application or for expedited review of any application).

(d) Assistance. The Committee shall be entitled, at any time and from time to time, to associate or employ a staff and to seek and obtain professional advice and counsel (including but not limited to architects, attorneys, designers, engineers and landscape technicians) in connection with the performance of its duties with all reasonable costs and expenses related thereto paid for or reimbursed by the Association. The Association may, in turn, reasonably recoup some or all of these expenses from the applicants seeking review and approval of plans and specifications.

(e) Privacy. Although the Subdivision Design Guidelines may include restrictions on the size and/or location of windows installed on certain sides of residences constructed on a Lot to enhance privacy of Owners of adjoining Lots, nothing contained in this Declaration, or incorporated herein by reference, guarantees the privacy of any Owner or occupant of any Lot. Every Owner, by acceptance of an interest in any Lot acknowledges and agrees that Declarant specifically disclaims any and all representations and warranties, express and implied, with regard to the enhancement of privacy, or lack thereof; and hereby fully and unconditionally releases Declarant, the Association, the Committee and their respective partners, officers and directors of any partner, agents, employees, and their respective successors and assigns from any and all loss, damage or liability related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to a lack of privacy.

11.5. No Waiver of Future Approvals. The Committee's approval of any Plans for any

Work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar Plans or other matters subsequently or additionally submitted for approval.

11.6. Variances. The Committee may authorize variances, waivers, tolerances or modifications set forth within the Covenants and Subdivision Design Guidelines under circumstances and conditions deemed reasonable, appropriate and prudent by the Committee, as may reasonably be required when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental conditions or considerations or other matters so require. Matters of "quality" "adequacy" and "propriety" are considered by the Committee from an aesthetic standpoint, and not from an engineering standpoint. Such variances shall not, however, (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in this Declaration; or (iii) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not constitute hardships.

11.7. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Committee shall not bear any responsibility for ensuring (i) structural integrity or soundness of approved construction or modifications, (ii) compliance with building codes and other governmental requirements, or (iii) conformity of quality, value, size or design among Lots. No approved approval of any application shall be deemed to be a representation or warranty that the construction or modification of any improvement pursuant to such approval will be free of defects in the quality of materials or labor provided or in its design. Each Owner should obtain whatever soils reports, foundation studies, and/or engineering studies the Owner deems necessary to determine the adequacy of construction of any improvement prior to the purchase of a Lot. **Neither the Declarant, the Association, the Board, the Committee or member of any of the foregoing, shall be held liable for soil conditions, drainage or other general site work, or for any defects in Plans revised or approved hereunder, or for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot. Plans and specifications are not reviewed or approved for engineering or structural design or technical quality of materials, and by approving plans and specifications neither the Committee nor the Association, any Members thereof, any Members of the Committee nor the Declarant assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, nor the Association, nor the Committee, nor the Board nor the officers, directors, managers, 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 of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. No approval of plans and specifications and no publication of any Subdivision Design Guidelines, architectural bulletins or lot information sheets shall be construed as representing or implying that such plans, specifications, guidelines, bulletins or sheets will, if followed, result in properly designed improvements and/or improvements built in a good and workmanlike manner or**

improvements which are in compliance with applicable building codes. Every Person who submits plans or specifications and every Owner of each and every Lot, agrees that he will not bring any action or suit against Declarant, the Association, the Committee, the Board, or the officers, directors, managers, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance 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.

11.8. Notice of Compliance. In the event that an Owner intends to transfer title to a Lot, the Owner must request the Committee to issue a Notice of Compliance reflecting that according to the records of the Association there are no known violations of this Article. The Association is not required to inspect the Lot at any time before or after issuance of a Notice of Compliance. This request must be made in writing at least twenty (20) days prior to the date of the proposed transfer. The Committee shall, at least ten (10) business days prior to the date of the proposed transfer, either issue the Notice of Compliance or notify the Owner in writing of the basis for non-issuance. This notice shall include a description of the violation(s) and the action necessary to correct the violation(s). In the event the Committee fails to either issue the Notice of Compliance or advise the Owner by written notice of the basis for its non-issuance within the time set forth above, the Owner may give the Committee written notice of such failure to respond, stating that, unless the Committee responds within three (3) business days of receipt of such notice, compliance with this Article shall be deemed to exist. The issuance or deemed issuance of a Notice of Compliance shall estop the Association from taking enforcement action with respect to any violation of this Article reflected in the records of the Association at the time of the issuance or deemed issuance of the Notice of Compliance, except as to those violations actually known to the Owner or transferee. In the event an Owner transfers title to a Lot without obtaining a Notice of Compliance, the transferee shall be responsible for correcting the violation(s) and shall be subject to all the remedies available to the Association to enforce violations of this Article.

In addition to the foregoing, any Owner may request, from time to time, that the Committee issue a Notice of Compliance with respect to his or her Lot. The Association shall either grant or deny such request within ten (10) business days after receipt of the written request. If the request is granted, the Committee shall have ten (10) business days from the acceptance of the request to either issue the Notice of Compliance or notify the Owner in writing of the basis for non-issuance. This notice shall include a description of the violation(s) and the action necessary to correct the violation(s). In the event the Committee fails to either issue the Notice of Compliance or advise the Owner by written notice of the basis for its non-issuance within the time set forth above, the Owner may give the Committee written notice of such failure to respond, stating that, unless the Committee responds within three (3) business days of receipt of such notice, compliance with this Article shall be deemed to exist. The issuance or deemed issuance of a Notice of Compliance shall estop the Association from taking enforcement action with respect to any violation of this Article reflected in the records of the Association at the time of the issuance or deemed issuance of the Notice of Compliance, except as to those violations actually known to the Owner.

11.9. Enforcement. In addition to any other remedy provided in this Declaration for violations of these Covenants, including the right to fine Owners for violations thereof, the Declarant and/or the Association and/or the Committee 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 Article and/or the approved plans. In addition, the Declarant and/or the Association and/or the Committee 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. A material violation of these Covenants shall be deemed to have occurred if no prior express written approval of the Committee has been obtained where it was originally required, even if hindsight reveals that the actual plans and specifications would have been approved by the Committee had they been properly and timely submitted.

In the event that any Person fails to commence and diligently pursue to completion all approved Work, Declarant or the Association shall be authorized, after providing notice and an opportunity to cure to the Owner, to enter upon the Lot and remove or complete any incomplete Work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment pursuant to Section 10.7.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Committee.

11.10. Notice of Violation. To evidence any violation of this Article or Article XI by any Owner, the Board may file, but is not required to file, in the Deed Records of Denton County, Texas, a notice of violation setting forth (i) the violation, (ii) the name of the Owner and Lot, and (iii) a sufficient legal description of the Lot. Such notice shall be signed and acknowledged by an officer or duly authorized agent or attorney of the Association. The cost of preparing and recording such notice may be assessed against the non-conforming Lot and collected as a Specific Assessment pursuant to Section 10.7.

11.11. Notices Any notice under this Article shall be deemed to have been given at the time the envelope containing such notice, properly addressed and postage prepaid, is deposited with the United States Postal Service, registered or certified mail, return receipt requested, or at the time it is delivered by facsimile transmission, with proof of receipt. Personal delivery of such written notice shall also be sufficient and shall be deemed to have been given at the time of delivery. The date of receipt shall be the date of actual receipt of such notice if the notice is personally delivered or sent by facsimile transmission (provided that any facsimile transmission sent after 5:00 p.m. shall be deemed received on the next business day), or three (3) days after the postmark date, whichever is sooner.

11.12. Right to Inspect. After reasonable notice to the Owner (and any applicable Resident), any member or agent of a Committee may from time to time at any reasonable hour or hours enter and inspect any property subject to the jurisdiction of said Committee to confirm

improvement or maintenance or alteration in compliance with the provisions hereof. No Improvements shall be constructed, erected, placed, altered or maintained on any Lot in a manner which is in violation of any of the laws or ordinances of the City of Frisco, Texas or any other applicable governmental laws, rules or regulations. However, Declarant, the Association, the Committee and their respective officers, directors, managers, agents and employees shall have no obligation to enforce or to report the violation of any such law, ordinance, rule or regulation.

11.13 Builder Performance. Neither the Association, the Committee or the Declarant, nor any Affiliate of Declarant, as hereinafter defined, are a co-venturer, partner, agent, employer, stockholder or affiliate of any kind of or with any Builder, nor is any Builder an agent of Declarant or an Affiliate of Declarant. Therefore, the Association, the Committee the Declarant and Affiliates of Declarant shall not be responsible for, or guarantors of, performance by any Builder of all or any of its obligations to any Owner pursuant to any contracts for the sale or construction of a Dwelling Unit or Lot or otherwise. Neither the Association, the Committee or the Declarant nor any Affiliates of Declarant has made, or have made, any warranty or representation with respect to performance by any Builder under any contract or otherwise,

Such Owner acknowledges and agrees that neither the Association, the Committee or the Declarant nor any Affiliate of Declarant share any liability or obligation to Owner, related to or arising out of any contract with a Builder or otherwise, by reason of any failure by a Builder fully and adequately to perform its obligations to Owner. Owner further acknowledges and agrees that Owner has not, in entering into any contract with a Builder, relied upon any representations, oral or written, of the Association, the Committee, the Declarant or any Affiliate of Declarant or any salesperson.

11.14. Geotechnical Reports. Geotechnical investigation reports are available for the Properties. Geotechnical engineering consultants were obtained to perform geotechnical inspection and testing relative to the general stratigraphy of the subsurface material present at the Properties. The reports are available for Builders, Lot Owners and their respective engineers and the Declarant or the Board will provide a copy of such report upon written request, for so long as such reports are available. The reports and all statements, accommodations and conclusions stated therein and any other discussions or communications with respect thereto are furnished with the express understanding that such reports will be for general information purposes only. Neither the Declarant nor the Association warrants or represents the accuracy or completeness thereof. Each Builder and Lot Owner is strongly advised to conduct such geotechnical investigations as they deem necessary for purposes of proper construction practices within the Properties. Each Builder and the owner of any Lot are advised to make their own independent investigation of construction sites and are responsible for reaching their own conclusions with respect to the design of improvements on each Lot insofar as same are impacted by geotechnical and subsurface elements of the construction site. In no event will the Declarant or the Association be responsible for conditions which differ from those indicated in the geotechnical reports obtained by the Declarant nor shall the Association or the Declarant be obligated to conduct additional investigations or inspections for the benefit of any Builder or Lot Owner.

Article XII
USE RESTRICTIONS AND RULES

12.1. Plan of Development: Applicability, Effect.

(a) Declarant has established a general plan of development for the Properties pursuant hereto in order to protect the Owners' collective interests, and the aesthetics and environment within the Properties. In furtherance of that general plan, this Declaration, and the guidelines, rules and restrictions promulgated pursuant to this Declaration, establish affirmative and negative covenants, easements, and restrictions on the Properties, subject to certain rights vested in the Board and the Members to enable them to respond to changes in circumstances, conditions, needs, and desires within the community.

(b) All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the By-Laws, and the rules of the Association.

12.2. Authority to Promulgate Use Restrictions and Rules. Additional use restrictions applicable to the Properties are attached as Exhibit "B" to this Declaration and are as recorded in the Real Property Records of Denton County, Texas as a portion of the Notice of Dedicatory Instruments which refers to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) In accordance with its duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board, with the consent of the Declarant as long as the Declarant owns property subject to this Declaration, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions set forth on Exhibit "B" and set forth in the Notice of Dedicatory Instruments.

(b) At least 30 days prior to the effective date of any such action under subsection (a) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter "Use Restrictions and Rules") to any requesting Member.

12.3. Owner Acknowledgment. All Owners and occupants of Lots are given notice that use of their Lots is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that the Use Restrictions and Rules may change from time to time.

12.4. Rights of Owners. Except as may be specifically set forth in Exhibit "B" attached hereto, neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted on each Lot on the basis of the size and facilities of the Lot and its fair use of the Common Properties.

(d) Activities Within Dwelling. No rule shall interfere with the activities carried on within the confines of dwellings on the Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance.

(e) Pets. The Association may adopt reasonable rules designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the Lot and fair share use of the Common Properties. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Properties to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Properties available, from adopting generally applicable rules for use of Common Properties, or from denying use privileges to those who abuse the Common Properties, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(g) Alienation. No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot; provided, the Association or the Board may require a minimum lease term of up to six months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop in accordance with the recorded development plats for the Properties or otherwise.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Lots to dispose of personal property which they owned at the time they acquired their interest in The Lot and such ownership was in compliance with all rules in force at that time, such rule shall not apply to any such Owners without their written consent.

The limitations in this Section 12.4 shall apply to rules only, they shall not apply to amendments to this Declaration adopted in accordance with Section 15.4.

Article XIII **EASEMENTS**

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Properties and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner occupant or the Association.

13.2. Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as the Declarant owns any property subject to this Declaration or subject to annexation under Section 9.1, the Association, and gas, electric, telephone and other utility companies, access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining any Common Properties, fences, improvements within Common Properties, cable television systems, security and similar systems, roads, walkways, bicycle pathways, wetlands, drainage systems, streets, sidewalks, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on the recorded Plat of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a dwelling on a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier, electric company, telephone company and natural gas supplier, easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Lot without the Owner's consent.

13.3. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, and safety reasons, to perform maintenance pursuant to Article V of this Declaration, to exercise the right of self-help pursuant to the By-Laws, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, any damage caused by entry shall be repaired by the Association as a Common Expense. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

13.4. Easement for Access. The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress and egress over the private streets within the Common Properties, for law enforcement, fire fighting, paramedic, rescue and other emergency vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; for other government employees in pursuit of their official duties; and for vehicles, equipment and personnel providing utility service or garbage collection service to the Properties; provided, such easement shall not authorize any such Persons to enter the Properties except while acting in their official capacities. The existence of this easement shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Properties, provided that the Association at all times maintains systems and/or procedures to permit the entry of Persons authorized to exercise the easements granted in this Section without unreasonable interference or delay.

13.5. Drainage Easements. There are hereby reserved unto Declarant, so long as the Declarant owns any property subject to this Declaration or subject to annexation under Section 9.1, and the Association, surface water drainage easements upon, across, over, and under all of the Lots to the extent shown on the Plat thereof for the purpose of handling and containing surface water drainage as designated for such purposes on the recorded Plat of the Properties. No impervious cover, driveway, pool deck, sidewalk, wall, retaining wall or other improvements which materially and adversely affect the use or the drainage easement for its intended purpose of holding and directing surface water drainage to other drainage facilities or features shall be constructed or located within the easement.

13.6. Retaining Wall/Fence Easements.

A. Definitions. For purposes of this Section 13.6, capitalized terms not previously defined in Article I of this Declaration shall have the meanings set forth below:

(a) "Retaining Wall" shall be a wall structure running generally parallel to the Common Boundary, with its face on the Common Boundary for the purpose of supporting and benefiting the Lot upon which it is constructed.

(b) "Common Boundary" shall be the lot line, as shown on a subdivision Plat, forming the common boundary line between any two adjoining Lots.

(c) "Dominant Estate" shall mean, as between two adjoining Lots, the Lot containing the Retaining Wall, with the face of the Retaining Wall being on the Common Boundary.

(d) "Servient Estate" shall mean, as between two adjoining Lots, the Lot which does not contain the Retaining Wall.

(e) "Retaining Wall Easement Area" shall mean a four foot (4') area on the Servient Estate which lies between the Common Boundary and a line generally parallel to the Common Boundary.

B. Use of Retaining Wall Easement Area. A perpetual non-exclusive easement on, over and across the Retaining Wall Easement Area of the adjoining Servient Estate is hereby granted to each Dominant Estate for ingress and egress by the Owner and Residents of the Dominant Estate and their invitees, for construction, reconstruction and maintenance of the Retaining Wall serving the Dominant Estate, subject to the restrictions set forth in this Declaration and approval of the Committee.

Nothing shall be done or permitted within the Retaining Wall Easement Area which would constitute a threat or hazard to the health and safety of the Residents of either the Servient Estate or the Dominant Estate, nor shall anything be done or permitted within the Retaining Wall Easement Area which defaces the Retaining Wall or the landscaping on either the Servient Estate or the Dominant Estate, or which adversely affects the integrity, structure or strength of the Dwelling Unit on either the Servient Estate or Dominant Estate.

The uses permitted within each Retaining Wall Easement Area by virtue of this Section shall be nonexclusive because same may be subject to utility, access and drainage easements, as well as any minor encroachments. In addition, the permitted uses of the Retaining Wall Easement Area are subject to any easements granted elsewhere in this Declaration.

C. Rights of Entry. The Owner of each Dominant Estate (and the authorized agents, representatives, contractors, etc., of such Owner) shall have a reasonable and temporary right of entry, access, ingress, egress and regress upon the Retaining Wall Easement Area reasonably necessary to perform and complete, in a prompt, efficient and good and workmanlike

manner, any construction or other work (whether original, remodeling or repair) which has been theretofore approved by the Committee.

The Committee is specifically authorized to promulgate ad hoc rules and guidelines pertaining to any particular construction or repair work likely to require the exercise of the right of entry described above so that the respective best interests of the adjoining Residents are, to the extent reasonably possible, harmonized and preserved.

D. Maintenance of Retaining Wall Easement Area Damage and Destruction.

(a) Notwithstanding anything to the contrary set forth herein, the Owner of the Servient Estate shall be responsible for maintaining landscaping, and any other improvements within the Retaining Wall Easement Area, in a neat and attractive condition in accordance with the standards generally prevailing throughout the Community. Any damage to the Servient Estate caused by the Dominant Estate Owner in the exercise of the easement rights granted in this Section shall be reasonably restored at the Dominant Estate Owner's expense to at least the same condition as when the Dominant Estate Owner initially entered the Servient Estate. Any damage to the Dominant Estate caused by the Servient Estate in the performance of maintenance responsibilities under this Section shall be reasonably restored at the Servient Estate Owner's expense to at least the same condition as existed prior to the damage.

(b) Notwithstanding anything to the contrary set forth in this Declaration, in the event that a Retaining Wall is damaged or destroyed by casualty, the Owner of the Dominant Estate shall proceed promptly to repair or restore the Retaining Wall in the manner consistent with its original construction, unless otherwise approved by the Committee.

E. Arbitration. In the event of any dispute, disagreement or controversy between or among any Owners pertaining to either the Retaining Wall, each party shall appoint one arbitrator. Should any party fail and/or refuse to appoint an arbitrator within ten (10) days after written request by the other party, the requesting party shall appoint an arbitrator for the refusing party. The arbitrators appointed shall appoint one additional arbitrator. The decision by a majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other. The Association and/or the Declarant shall have no responsibility in resolving any disputes between Members concerning a Retaining Wall.

13.7. Easements to Benefit of Supplemental Land.

(a) Easement for Access. The Declarant hereby grants and creates a perpetual, nonexclusive easement to and for the benefit of the Supplemental Land for access, ingress and egress over the private streets within the Common Properties, and to and from the Supplemental Land for: (i) Persons who are owners or occupants of the Supplemental Land, their guests, invitees, and business invitees; and (ii) law enforcement, fire fighting, paramedic, rescue and other emergency vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; for other government employees in pursuit of their official duties; and for vehicles, equipment and personnel providing utility service or garbage collection

service to the Properties; provided, such easement shall not authorize any such Persons to enter the Properties except while acting in their official capacities. The existence of this easement shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Properties, provided that the Association at all times maintains systems and/or procedures to permit the entry of Persons authorized to exercise the easements granted in this Section without unreasonable interference or delay.

(b) Easements for Utilities, Etc. There are hereby granted to the benefit of the Supplemental Land, gas, electric, telephone and other utility easements and access and maintenance easements upon, across, over, and under all of the utility easements within the Properties to the extent reasonably necessary for the purpose of placing, replacing, repairing, and maintaining any cable television systems, security and similar systems, drainage systems, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing within easements designated for such purposes on the recorded Plat of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any land outside of such easements and any damage resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot or Common Properties and, except in an emergency, entry onto any easement shall be made only after reasonable notice to the Declarant or after the Class B Control Period, the Association. All improvements installed or maintained pursuant to this easement will be installed, to greatest extent reasonably possible, underground.

Article XIV **DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned, temporarily or permanently, to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Real Estate Records of Denton County, Texas.

So long as construction and initial sales of Lots shall continue, the Declarant and any Builder authorized by Declarant (which authority of a Builder must be in writing) may maintain and carry on upon portions of the Properties such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 10 years from the date this

Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XV
GENERAL PROVISIONS

15.1. Power of Attorney. Each and every Owner and Member hereby makes, constitutes and appoints Declarant as his/her true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her and in his/her name, place and stead and for his/her use and benefit, to do the following:

(a) To exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Properties and not specifically reserved to the Owners or Members hereunder;

(b) To sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Properties, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing; and

(c) To sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Public Real Estate Records of Denton County, Texas, and shall remain in full force and effect thereafter until termination of the Class "B" Control Period.

15.2. Term. Unless earlier terminated by an instrument executed by Owners of at least 75% of the Lots and by the Declarant, if the Declarant then owns any property subject to this Declaration, this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 50 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part; or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein, provided, however, the regime created by this Declaration shall not be terminated without the prior written consent of the City of Frisco.

15.3. Amendment. The covenants set forth herein are expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as

provided herein. Notwithstanding Section 15.2, these covenants may be amended and/or changed in part as follows:

(a) By Declarant. Until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans to enable such lender or purchaser to make or purchase mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency. So long as the Declarant still owns property subject to this Declaration, it may also unilaterally amend this Declaration for the purpose of clarification or to correct technical, typographical or scrivener's errors, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total Class "A" votes in the Association and during the Class "B" Control Period, the consent of the Declarant.

(c) Validity of Amendments. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the Public Real Estate Records of Denton County, Texas.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

15.4. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications. In the event any portion of these covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by Denton County or the City of Frisco, Texas, then such local governmental requirements shall control.

15.5. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

15.6. Litigation. Judicial and administrative proceedings may be commenced and prosecuted by the Association with Board approval. This includes, but is not limited to (a) actions brought by the Association to enforce the provisions of this Declaration including, without limitation, the foreclosure of liens; (b) the imposition and collection of assessments as

provided in Article XI; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it.

15.7. Use of the Words "The Hills of Kingswood". No Person, other than Declarant and its Affiliates, shall use the words "The Hills of Kingswood" or any derivative thereof in any signage or printed or promotional material without the Declarant's prior written consent. However, Owners may use the name "The Hills of Kingswood" in printed or promotional matter where such name is used solely to specify that a particular Lot is located within the Properties and the Association shall be entitled to use the words "The Hills of Kingswood" in its name.

15.8. Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, the By-Laws, the rules and other Governing Documents of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Owner(s).

15.9. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 14 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.10. Right of City of Frisco. In the event that the Association or its successors or assigns shall fail or refuse to adequately maintain the appearance and condition of the Common Properties and/or Properties which the Association is obligated to maintain hereunder, the City of Frisco, Texas shall have the right and may assume the duty of performing all such maintenance obligations of the Association at any time, upon giving written notice to the Owners or at any time after the expiration of 10 days after receipt by the Association, it's successors or assigns, of written notice specifying in detail the nature and extent of the failure to maintain without such failure being remedied, whichever notice shall be deemed appropriate by the City of Frisco. Upon assuming such maintenance obligations, the City of Frisco may levy an assessment upon each Lot on a pro rata basis for the cost of such maintenance, notwithstanding any other provisions contained in this Declaration, which assessment shall constitute a lien upon the Lot against which each assessment is made. During the period the City of Frisco has a right and assumes the obligation to maintain and care for the Common Properties and/or Properties, the Association shall have no obligation or authority with respect to such maintenance. The right and authority of the City of Frisco to maintain the Common Properties and/or Properties shall cease and terminate when the Association, its successors or assigns, shall present to the City of Frisco reasonable evidence satisfactory to the City of its willingness and ability to resume maintenance of the Common Properties and/or Properties. In the event the City of Frisco assumes the duty of performing the maintenance obligations of the Association as provided herein, then the City of Frisco, its agents, representatives and employees shall have right of access to and over the Common Properties and/or Properties

for the purpose of maintaining, improving and preserving the same; and in no event, and under no circumstances, shall the City of Frisco be liable to the Association or any Owner or their respective heirs, executors, administrators, devisees, personal representatives, successors and assigns for negligent acts or construction relating in any manner to maintaining, improving and preserving the Common Properties and/or Properties, or to any Owner, the Association or any other Person for failure to perform such maintenance.

15.11. Registration with the Association. Each and every Owner shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within 15 days after a material change in any of the following has occurred, various items of information to the Association including: (a) the full name and address of such Owner; (b) the full name of each individual who resides on such Owner's Lot; (c) the business address, occupation and telephone numbers of each resident of such Owner's Lot; and (d) such other information as may be reasonably requested from time to time by the Association. In the event any Owner fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

15.12. Disputes. Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Association By-Laws, shall be determined by the Board of Directors. These determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners.

15.13. Enforcement. Enforcement of these Covenants may be initiated by any proceeding at law or in equity by the Association or any Owner against any Person or Persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants; but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City of Frisco, Texas is specifically authorized (but not obligated) to enforce these Covenants.

15.14. Validity. Violation of or failure to comply with these Covenants shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of these Covenants, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of Frisco (including, without limitation, the Zoning Ordinance), then such municipal requirement shall control.

15.15. 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. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

15.16. Notices to Resident/Member/Owner Any notice required to be given to any Resident or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when: (a) deposited in the United States Mail, postage prepaid, addressed to the last known address of the Person who appears as the Resident, Member or Owner, respectively, on the records of the Association at the time of such mailing; or when (b) delivered by hand or by messenger to the last known address of such person within the Properties. Any change in address must be made in writing to the Association by certified mail, return receipt requested, at the principal office of the Association or the managing agent, if any.

15.17. Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Owner in the performance of such mortgagor/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

15.18. Exhibits and Schedules. Exhibits and Schedules attached hereto are:

- Exhibit "A" - Legal Description of the Properties
- Exhibit "B" - Initial Use Restrictions and Rules
- Exhibit "C" - Legal Description of Supplemental Land
- Schedule I - Initial Base Assessments on Improved Lots

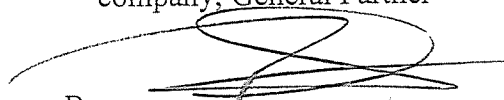
IN WITNESS WHEREOF, the Declarant has executed this Declaration effective July 27, 2010, though not necessarily signed on that date.

[SIGNATURES ON FOLLOWING PAGE]

Signature Page to
Amended and Restated Declaration of
Covenants, Conditions and Restrictions for
The Hills of Kingswood

DECLARANT: HILLS OF KINGS WOOD, L.P.,
a Texas limited partnership

By: HKW GP, LLC, a Texas limited liability
company, General Partner

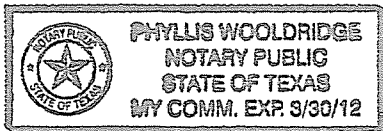

By: _____
Name: ROGEE SACO-VERTIZ
Title: MANAGING MEMBER


THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

REPRESENTATIVE ACKNOWLEDGMENT

This instrument was acknowledged before me on the 20th day of December 2010, by Rogee Saco-Vertiz the Managing Member of HKW GP, LLC, a Texas limited liability company, general partner of Hills of Kings Wood, L.P., a Texas limited partnership, on behalf of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 20th day of December, 2010.





NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS


[Print or Type Name of Notary]
My Commission Expires: _____

Upon recording, please return to:

Signature Page to
Amended and Restated Declaration of
Covenants, Conditions and Restrictions for
The Hills of Kingswood

The undersigned, The Hills of Kingswood Homeowners Association, Inc., a Texas non-profit corporation hereby joins in this Declaration to evidence its agreement to be bound by the terms and conditions hereof and to join in and consent to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Hills of Kingswood.

THE HILLS OF KINGSWOOD HOMEOWNERS
ASSOCIATION, INC., a Texas Non-Profit
Corporation

By: 

Name: Roane Saco-Veltic

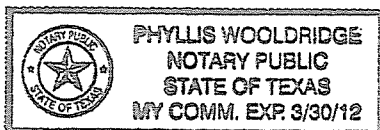
Title: Secretary

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

REPRESENTATIVE ACKNOWLEDGMENT

This instrument was acknowledged before me on the 20th day of December 2010, by Roane Saco-Veltic the Secretary of THE HILLS OF KINGSWOOD HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation, on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 20th day of December, 2010.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

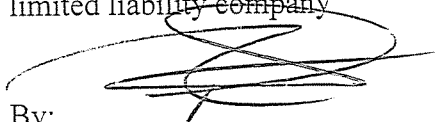
[Print or Type Name of Notary]
My Commission Expires: _____

Signature Page to
Amended and Restated Declaration of
Covenants, Conditions and Restrictions for
The Hills of Kingswood

The undersigned, HKW Land Holdings, L.P., a Texas limited partnership and as the owner of the Supplemental Land hereby joins in and consent to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Hills of Kingswood in order to cause the Supplemental Land to be subject to the provisions of Section 9.4 of the Declaration. HKW Land Holdings, L.P., a Texas limited partnership hereby declares that the Supplemental Land shall be held, sold and conveyed subject to the provisions of Section 9.4 of the Declaration.

HKW LAND HOLDINGS, L.P., a
Texas limited partnership

By: HKW Land GP, LLC, a Texas
limited liability company

By: 

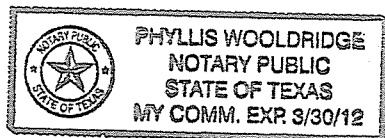
Roque Saco-Vertiz, Member

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

REPRESENTATIVE ACKNOWLEDGMENT

This instrument was acknowledged before me on the 20th day of December 2010, by Roque Saco-Vertiz a Member of HKW GP, LLC, a Texas limited liability company, general partner of HKW LAND HOLDINGS, L.P., a Texas limited partnership, on behalf of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 20th day of December 2010
2010.





NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

[Print or Type Name of Notary]
My Commission Expires: _____

SIGNATURE PAGE TO
JOINDER BY MORTGAGEE

The undersigned (the "**Mortgagee**"), as the Beneficiary and the holder of an Amended and Restated Promissory Note executed by Hills of Kings Wood, L.P., a Texas limited partnership ("Borrower" or "Declarant") dated February 28, 2007 in the principal amount of \$15,208,473.00, payable to the order of Nexbank, SSB, a State savings bank, secured by an Amended and Restated Deed of Trust, Security Agreement, Assignment of Leases and Fixture Filing of even date therewith in favor of Howard E. Schreiber, Trustee, recorded at Instrument Number 2007-26764, Official Records of Denton County, Texas;

Additionally secured by Financing Statement by and between Hills of Kingswood, L.P., as "Debtor", and Nexbank, SSB, as "Secured Party", recorded at Instrument Number 2007-26765, Official Records of Denton County, Texas; (all of the preceding documents and instruments being referred to herein, collectively, as the "**Loan Documents**" and the liens and security interests created in accordance with the Loan Documents being referred to herein, collectively as the "**Liens**");

hereby joins in and consents to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Hills of Kingswood ("**Declaration**") and agrees that, except as hereafter provided, all of the easements, terms and covenants set forth therein are superior to the Loan Documents and all other documents evidencing or securing the loan secured by the Loan Documents. Without limiting the generality of the preceding sentence, Mortgagee agrees that, except as hereafter provided, the Declaration shall continue to run with and bind the Properties notwithstanding any foreclosure under the Mortgage. It is provided, however, that the Liens arising pursuant to the Loan Documents are not hereby subordinated to the assessment liens created pursuant to the Declaration, as same are referenced at Article X of the Declaration, and it is expressly agreed and understood that the Liens created by the Loan Documents are and shall remain prior and superior to the liens for assessments arising under the Declaration. If the Mortgagee shall ever take title to any of the property covered by its Liens, the Mortgagee agrees that it shall be responsible for assessments arising against such property from and after the date that the Mortgagee shall take title to the property and only during the period of ownership by the Mortgagee, and assessments accruing from and after the date of any such foreclosure or deed in lieu thereof shall be secured by the liens created in accordance with the Declaration.

Borrower joins herein and agrees as follows:

1. Borrower does hereby assign, transfer and pledge to Mortgagee and grant to Mortgagee a first priority and the only security interest in all right, title and interest of Borrower as Declarant under and pursuant to the Declaration. This Assignment is made as and shall constitute collateral security for any and all Indebtedness and Obligations, as each such term is defined in the Loan Documents, of any kind and nature of Borrower or Guarantor, as such term is defined in the Loan Documents, to Lender, howsoever evidenced, whether now existing or hereafter arising, direct or indirect, absolute, contingent, joint, several or joint and several.

2. An Architectural Review Committee (the "ACC") may be appointed by Declarant pursuant to the Declaration. The ACC will promulgate Design Guidelines governing various matters including design and development restrictions and requirements for development of improvements within the properties covered by the Declaration. Design Guidelines will be presented to the Mortgagee for its approval prior to adopting same, such approval not to be unreasonably withheld or delayed and such approval to be deemed to have been given if not expressly denied, in writing, within twenty (20) days after same have been presented to the Mortgagee for approval. To be effective, any denial of approval must be timely sent and must specify, in writing, the reasonable basis for the denial of approval.

IN WITNESS WHEREOF, this Joinder has been executed this 29 day of July, 2010.

[SIGNATURE PAGES FOLLOW IMMEDIATELY HEREAFTER. BALANCE OF THIS PAGE IS BLANK.]

**SIGNATURE PAGE TO
JOINDER BY MORTGAGEE**

MORTGAGEE:

NEXBANK, SSB, a State savings bank

By: [Signature]

Name: _____

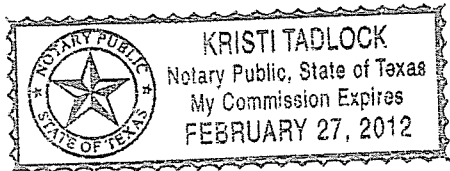
Title: Matt Beshears
Senior Vice President

STATE OF TEXAS :

COUNTY OF DALLAS :

This instrument was acknowledged before me on this 20 day of December, 2010, by Matt Beshears, SVP, _____ of Nexbank, SSB, a State savings bank, on behalf of said Bank.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2 day of December, 2010.



(SEAL)

[Signature]
Notary Public, State of Texas
Printed Name: Kristi Tadlock
My Commission Expires: 2/27/12

DECLARANT AND BORROWER:

HILLS OF KINGS WOOD, L.P.,
a Texas limited partnership

By: HKW GP, LLC, a Texas limited liability company, General Partner

By: [Signature]
Name: ROQUE SACO-VELEZ
Title: member

EXHIBIT "A"
Legal Description of the Properties

The land described in the Final Plat of Kingswood, Phase I, a subdivision of the City of Frisco, Denton County, Texas, recorded in Volume Y, Page 549-556 of the Plat Records of Denton County, Texas.

EXHIBIT "B"
Initial Use Restrictions and Rules

A. Certain Prohibited Uses. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as maybe imposed by, the Association pursuant to Article XII of the Declaration:

1. Use of Common Properties. No Person (other than the Declarant) shall use any portion of the Common Properties to:

- (a) solicit, promote or conduct business, religious, political or propaganda matters; or
- (b) distribute handbills, newsletters, flyers, circulars or other printed materials,

without the prior written consent of the Board (which consent may be withheld in its sole and absolute discretion). The Board may, on its own motion, permit and allow town hall meetings, voting precincts, community garage sales and bazaars and other reasonable activities to occur on the Common Properties in accordance with rules and regulations deemed reasonable and appropriate by the Association.

2. Business Use. No business, trade, garage sale, moving sale, rummage sale, or similar activity shall be carried on in or from any Lot, except that an Owner or occupant residing in the dwelling on the Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; (d) the business activity does not reduce the capacity of the garage on the Lot to accommodate the number of vehicles for which it was originally designed and approved; and (e) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

B. Certain Use Restrictions. The Properties (and each Lot situated therein) shall be constructed developed, occupied and used as follows:

1. Residential Use. All Lots shall be used for residential purposes. No Owner shall conduct, transmit, permit or allow any type or kind of commercial or home business or home profession or hobby on his Lot or within any dwelling unit on his Lot which would violate the requirements of Section A2 of this Exhibit "B". The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations and ordinances of the City of Frisco, Texas or any other governmental authority having jurisdiction over the Lot.

Notwithstanding the above, the leasing of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties.

2. Residential Structures. No building or structure shall be erected, altered, placed or permitted to remain on any residential Lot other than one (1) single-family dwelling and, if any, its customary and usual accessory structures (unless otherwise prohibited herein). No building or structure intended for or adapted to business or commercial purposes shall be erected, placed, permitted or maintained on such premises, or any part thereof, save and except those related to development, construction and sales purposes of a Builder, the Declarant or the Association.

3. Alarms. The Subdivision Design Guidelines and/or the Committee may require that the construction plans and specifications for each residential dwelling include provisions for the installation and equipment of first-class fire and burglar alarms, smoke detectors and such other similar devices which, from time to time, become technologically feasible for residential use as may be further described and defined by the Committee.

4. Parking. No vehicle shall be parked within the Properties except on a paved parking surface, driveway or within a garage. No trucks over 3/4 ton (excluding conventional pickups and SUVs), buses, golf carts, motorcycles or vehicles that are primarily used for commercial purposes, other than those temporarily present on business, nor any trailers, may be parked within the Properties other than enclosed garages or other areas concealed from public view. Boats, boat trailers, campers, travel trailers, mobile homes, recreational vehicles and the like, and any vehicles not in operable condition and validly licensed, shall only be permitted to be kept within the Properties if such are kept inside a garage and concealed from public view. Parking on the streets shall not be permitted and shall otherwise be restricted in accordance with the laws, statutes, ordinances and rules of the state and municipal governments applicable to the Properties. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules. The Board may adopt reasonable rules and regulations governing the parking and operation of vehicles on the Properties, which rules may include the towing of vehicles parked in violation of this Declaration or the rules and the levying of reasonable fines for such violations.

5. Garages; Carports. Each single-family residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles, unless otherwise specifically approved by the Committee. All garage doors shall be closed at all times when not in

use. Carports are not permitted. Any and all proposed garage plans and specifications must be submitted to the Committee for review and approval. No owner or resident shall perform, permit or allow repair or maintenance work to any automobile or other vehicle outside the garage and visible to the abutting street(s). All garage doors shall be equipped with automatic remote controlled door openers and shall remain closed except when open for vehicle ingress and egress.

6. Setback Requirements. Setback requirements are set forth on the Plat, however, there is hereby reserved to the Committee, the right to restrict building to or near the set back lines as set forth below. The Committee may establish additional setback lines (for fences, walls and for buildings) from the front property line of each Lot at varying distances. In order to allow flexibility for: (i) implementation of state-of-the-art construction designs, and (ii) any consolidation of two (2) or more Lots to accommodate the construction of a lesser number of dwelling units thereon, the Committee shall also have the authority to develop and refine rear and side yard setback requirements. Within the setback areas for each Lot and subject to the construction or installation of any other items otherwise permitted, a non-exclusive surface easement and right-of-way is reserved for the Association in order to properly facilitate and carry out its duties and responsibilities under this Declaration. Notwithstanding the preceding, even though setback requirements may be designated on the Plat as to the side, front and rear building lines, the Committee may require that improvements not be built to any one or more of such setback lines in order to enhance the streetscape or otherwise deal with conditions which may be dictated by improvements on neighboring Lots. It may be the desire of the Committee to enhance the streetscape within the Properties by requiring that the actual front building line of improvements located on various Lots not extend to the platted setback line. It is specifically provided that even though side, front and rear setback lines may be designated on the Plat, such designated setback line does not infer that the owner of any given Lot will be entitled to build Improvements on such Lot to the setback line. Accordingly, it is expressly provided that setback lines set forth on the Plat are absolute minimum building lines and Committee reserves the right to require that no improvements on a given Lot may be constructed to, on or near the platted setback line.

7. Height Limitations: Elevations. No Structure on any Lot shall exceed the height limit specified by the Subdivision Design Guidelines or the Committee. In order to create a desired architectural appearance and mix of one (1) and two (2) story structure heights the Committee may prescribe inter-related height and setback requirements. The Committee shall have the power and authority to further develop and refine guidelines and interpretations concerning the height concepts and limitations envisioned herein.

8. Fences: Signs. No fence, wall or hedge (which serves as a barrier) shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line as established by the Subdivision Design Guidelines or the Committee. Unless otherwise approved by the Committee, all exterior mechanical or service equipment adjacent to a Dwelling Unit must be enclosed within fences, walls or landscaping so as not to be visible from the immediate residential street. No fence, wall or hedge shall be erected, placed or altered on any residential Lot without the approval of the Committee. No fencing constructed entirely or partially of wood may be constructed anywhere on any Lot unless approved, in writing, by the Committee, it being specified that wood fencing is generally prohibited. The Declarant has designed, adopted and prepared specifications for, a standard sign structure for use within the Properties by Builders, Owners and Residents in connection with the sale, lease and development of Residential Units

and Lots within the Properties (the "The Hills of Kingswood Standard Signage") and the Declarant reserves the right to alter, from time to time, the design and detail of the The Hills of Kingswood Standard Signage. No sign or signs shall be displayed to the public view on any residential Lot, except the following shall be permitted:

(a) any builder, during the applicable initial construction and sales period, may utilize two (2) professional signs (of not more than six (6) square feet in size) per Lot for advertising and sales purposes. Any such signs shall be fabricated to the specifications of the The Hills of Kingswood Standard Signage;

(b) thereafter, a dignified "For Sale" or "For Lease" sign (of not more than six (6) square feet in size) may be utilized by the Owner of the respective residential Lot for the applicable sale or lease situation. Any such signs shall be fabricated to the specifications of the The Hills of Kingswood Standard Signage;

(c) development-related signs owned or erected by the Declarant; and

(d) model home or other signs specifically permitted by the Committee in writing. Any such signs shall be fabricated to the specification of the The Hills of Kingswood Standard Signage.

The Declarant and/or the Committee shall have the right and privilege to develop and implement additional uniform signage specifications and requirements applicable throughout the Properties.

9. Easements: Utilities. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plats of the Properties. Utility service may be installed along or near the front and/or side and/or rear lot lines and each Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the Committee (e.g. fencing, flatwork, landscaping, etc.), no Owner shall erect, construct or permit any obstructions or permanent improvements of any type or kind to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Electrical (and possibly other utility) easements are likely to be located at, near or along the front, side and rear lot line(s), and each Lot Owner assumes full, complete and exclusive liability and responsibility for all cost and expense related to damage, repair, relocation and restoration of such improvements or fence. Except as to special street lighting or other aerial facilities which may be required by the City of Frisco or which may be required by the franchisee of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on individual Lots, easements, streets or right-of-way of any type, either by the utility company or any other Person, including, but not limited to, any Person owning or acquiring any part of the Properties, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility. All utility meters, equipment, air conditioning compressors and similar items must be visually screened and located in areas designated by the Committee. Pursuant to requirements by utility company(ies) providing service to the Properties, the following provisions and covenants

are to run with the land within the Properties with the same force and effect as all other covenants herein and as if such provisions and covenants had originally been recited within the Deed to each Lot executed and delivered by Declarant:

(a) Since electric service is to be furnished to each of the Lots solely by underground facilities, each Owner agrees for himself, his heirs, executors, administrators, successors and assigns, that he will, at his own expense, install and maintain the necessary underground facilities to connect the Owner's installation with the service wires of the subject electric utility company and security system at the point of delivery of electric energy.

(b) Each Owner shall assume full and complete responsibility for all costs and expenses arising out of or related to the repair, replacement or restoration of any utility equipment damaged or destroyed as a result of the negligence or mischief of the Owner or any resident of such Owner's Lot.

10. Temporary Structures. No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent, shack, barn or any other accessory structure shall be placed on any Lot, either temporarily or permanently, unless such structure is completely concealed from public view, and no structure shall be moved upon any Lot from another location, except that Declarant shall have the exclusive right to erect, place and maintain, and to permit Builders and Owners to erect, place and maintain such facilities in and upon the Common Properties as in the Declarant's sole discretion may be necessary or convenient during the Class "B" Control Period. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales offices.

11. Site Maintenance, Garbage and Trash Collection. Owners are responsible to keep construction sites free of rubbish and streets (to the crown) scraped clear of any mud accumulation. Owners will not be allowed to store any excavation of soil on streets or adjacent sites without prior written permission of the Committee. Soil runoff due to rain or irrigation shall be removed promptly from streets and sidewalks by the Owner. The Board may adopt rules regarding the maintenance of construction sites, including the imposition of fines for violations of this Section 11.

All garbage shall be kept in plastic bags or other containers required by (and meeting the specifications of) the City of Frisco. Each Resident shall observe and comply with any and all regulations or requirements promulgated by the Association and/or the City of Frisco in connection with the storage and removal of trash and garbage, particularly where the collection point is in front of the residential Dwelling Units.

No Lot, or any portion of the Common Properties or any public right-of-way area, shall be used or maintained as a dumping ground for rubbish, trash or garbage. No Owner or Resident shall dump grass clippings, landscape debris, garbage or trash of any kind on another Lot or on the Common Properties. Each Owner is responsible for the appearance and condition of such Owner's Lot. If more than five (5) days after prior written notice an Owner shall fail to: (i) control weeds, grass and/or other unsightly growth; (ii) remove trash, rubble, building and construction debris; or (iii) exercise reasonable care or conduct to prevent or remedy an unclean, untidy or unsightly condition, then Declarant or the Association shall have the authority and right

to go onto said Lot 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 reasonable charge for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. The assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing Payment and Performance Lien upon each Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the continuing personal obligation of the Person who was the Owner of such Lot at the time when the assessment occurred.

No landscape debris of any nature shall be deposited in or near drainage facilities including, but not limited to, inlet drains which access the storm sewer system within the Properties.

12. Offensive Activities: Pets. No noxious or offensive activity or pollution affecting sight/sound/smell, as determined by the Board, shall be conducted or permitted on any portion of the Properties. No direct sales activities (excluding, however, activities of the Declarant and bona-fide homebuilders and community activities specifically approved by the Board), garage sales, yard sales, patio sales, flea markets, bazaars, sample sales, or similar activities shall be conducted on any portion of the Properties.

Any noise or odor emitted by, and any discharge or waste from, any animal (including without limitation dogs and cats) which can be seen, heard or smelled outside the perimeter of the subject Owner's (or Resident's) Lot shall be deemed noxious and offensive and is therefore prohibited. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential Lot, except that a reasonable number of dogs, cats or other commonly recognized household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes and they are not noxious, offensive or dangerous. Each and every dog must be leashed and accompanied by its owner when traveling beyond the perimeter of a secure enclosure (as hereinafter defined), and such pet owner shall promptly clean and remove the discharge and waste of his or her pet. Any animal determined by the Board in its sole and absolute discretion to be in violation of this Section 12 shall be removed from the Properties upon request of the Board. If the owner of such animal fails to honor such request, the Board may, in addition to any other remedy provided in this Declaration, cause the removal of the animal from the Properties.

For purposes of this Section, a pet shall be considered "dangerous" if it (i) makes an unprovoked attack on a Person that causes bodily injury and occurs in a place other than an enclosure in which the pet was being kept and that was reasonably certain to prevent the pet from leaving the enclosure on its own; or (ii) commits unprovoked acts in a place other than an enclosure in which the pet was being kept and that was reasonably certain to prevent the pet from leaving the enclosure on its own and those acts cause a Person to reasonably believe that the pet will attack and cause bodily injury to that Person. For purposes of this Section, a "secure enclosure" means a fenced area or structure that is (i) locked; (ii) capable of preventing the entry of the general public, including children; (iii) capable of preventing the escape or release of a pet; (iv) clearly marked as containing a dangerous pet; and (v) in conformance with the requirements for enclosures established by the local animal control authority.

Any outside pen, cage, kennel, shelter, concrete pet pad, run, track or other building, structure or device directly or indirectly related to animals which can be seen, heard or smelled

by anyone other than the subject Owner must be approved in writing by the Committee in its sole and absolute discretion.

13. Landscaping: Maintenance. Construction of each and every Dwelling Unit within the Properties shall include the installation and placement of appropriate landscaping. Each Owner shall have the duty and responsibility, at his sole cost and expense, to keep and maintain the Lot, and all improvements therein and thereon, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance shall include (without limitation):

- A. the proper seeding, consistent watering and mowing of all lawns;
- B. the pruning and cutting of all trees and shrubbery;
- C. the prompt removal of all litter, trash, refuse and waste;
- D. watering of all landscape;
- E. keeping exterior lighting and mechanical facilities in working order. In addition, all exterior lights that are required to be maintained or designed into the Improvements shall be operated by photo cell, shall be kept in working order at all times, and shall come on at dusk and shall remain on until dawn;
- F. keeping lawn and garden areas alive, free of weeds and attractive. All lawns mowed as needed to conform to Community-Wide Standards;
- G. keeping driveways in good repair and condition;
- H. promptly repairing any exterior damage;
- I. complying with all governmental health and police requirements; and
- J. keeping all surface water drainage facilities and Improvements and Retaining Walls in good repair and condition as contemplated and specified in plans and specifications approved by the Committee;

all in a manner and with such frequency as is consistent with aesthetics, safety and good property management. The Association and its agents, during normal business hours, shall have the right (after five (5) days written notice to the Owner of any Lot involved setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any Person) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement shall be paid to the Association upon demand and if not paid within thirty (30) days thereof, shall become a lien upon the Lot affected. The Association, or its agent, shall further have the right (upon like notice and conditions), to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is

dangerous or is unattractive in appearance. The lien provided under this section will constitute a lien retained against such property with the same force and effect as the Payment and Performance Lien for assessment set forth in these Covenants.

14. Exterior Surfaces. All roofs shall be constructed of materials permitted pursuant to the Subdivision Design Guidelines taking into account harmony, conformity, color, appearance, quality and similar considerations. The exterior surface of all Dwelling Units shall be constructed of materials permitted pursuant to The Subdivision Design Guidelines. Installation of all types of exterior items and surfaces such as address numbers or external ornamentation, outdoor illumination, lights, mail chutes, exterior paint or stain and the like shall be subject to the prior approval of the Committee. All exterior surfaces shall be maintained in first class condition, including painting and cleaning as needed to satisfy this standard.

15. Antennae. No television, radio or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcast or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, 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. Notwithstanding the foregoing, no more than one (1) antennae of each provider of over-the-air video programming signals by TVBS, MMDS or DBS may be installed by an Owner at any one time. The Association shall be empowered to adopt rules governing the type of antennae that are permissible hereunder and establish reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. To the extent that reception of an acceptable signal would not be impaired and the cost of installation would not be unreasonably increased, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not visible from the street and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land use and building regulations.

16. Subdivision and Time Sharing. No Lot shall be subdivided into two or more Lots, nor shall two or more Lots be combined into a single Lot, nor shall a Lot have its boundary lines changed after a subdivision plat including such Lot has been approved and recorded except with the prior written approval of the Board. Declarant, however, hereby expressly reserves the right to subdivide, change the boundary line of and re-plat any Lot(s) owned by Declarant. Upon the recording of any re-plat of one or more Lots, the total number of Lots shown on the re-plat shall be the number of Lots subject to assessment under this Declaration.

No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

17. Wetlands and Other Water Bodies. All wetlands, ponds and streams within the Properties, if any, shall be aesthetic amenities only and no other use thereof, including, without limitation, fishing, skiing, swimming, boating, playing or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of ponds or streams within the Properties. No docks, piers or other structures

shall be constructed on or over any body of water within the Properties, except such as may be constructed by the Declarant or the Association.

18. Exterior Structures, Playground, Recreational Equipment. No gazebo, flagpole, pool pavilion, trellis, lanai, greenhouse, storage shed, or other similar structure shall be erected, constructed or placed on any Lot without the prior written approval of the Committee. No jungle gyms, swing sets, basketball hoops and backboards, similar playground equipment, tennis courts or such other recreational equipment shall be erected or installed on any Lot without prior written approval of the Committee. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user. The Association shall not be held liable to any Person for any claim, damage or injury occurring thereon or related to use thereof.

19. Flags. Each Owner and Resident of the Properties has a right to fly the United States flag and/or the Texas state flag on such Owner's or Resident's Lot, subject to the following requirements:

- a. The flag size may not exceed 4 feet in height or 6 feet in length.
- b. The flag may be flown from a flag holder mounted on the front façade of the Dwelling Unit.
- c. If flown at night (after sunset), the flag must be illuminated from dusk until dawn. The method or amount of illumination must not spillover into the yards, windows, or skylights or neighboring Dwelling Units.
- d. The flag may be flown from an in-ground pole that does not exceed 20 feet in height above the ground, provided the pole is installed within 8 feet of an exterior wall of the Dwelling Unit, and approved by the Committee.
- e. The flag must – at all time – be flown in a respectful manner, and in compliance with applicable provisions of the Federal Flag Code.
- f. The authorization of this Section does not permit the flying of other types of flags, or of pennants, banners, kites, windsocks, or similar types of displays if the display is visible from a street or Common Properties.

20. Single Family Occupancy. No Lot shall be occupied by more than a single family. For purposes of this restriction, a single family shall be defined as any number of individuals related by blood, adoption or marriage living with not more than two individuals who are not so related as a single household unit, or no more than three individuals who are not so related living together as a single household unit, and the household employees of either such household unit; provided, however, that nothing herein shall be interpreted to restrict the ability of one or more adults in meeting the definition of a single-family from residing with any number of individuals under the age of eighteen (18) over whom such individuals have legal authority.

21. Maintenance of Vacant Lots. The Association hereby reserves the right to maintain grass or other ground cover on vacant Lots located within the Properties, whether such Lots are

owned by the Declarant, a builder or some individual Owner and maintenance of such Lots is retained by the Declarant to confirm that such Lots will be well maintained as regards mowing, weed eradication, debris removal and erosion control. The Base Assessment charged to the Owner of a Vacant Lot takes into account the cost of this additional maintenance obligation which is reserved by the Association.

EXHIBIT "C"
Legal Description of the Supplemental Land

[See Following Pages Attached]

LEGAL DESCRIPTION FOR REMAINING PORTION OF KINGSWOOD PROPERTY

THAT certain tract of land situated in the J. W. RAGLAND SURVEY, ABSTRACT NUMBER 1092, in the City of Frisco, Denton County, Texas, being PARCEL A and PARCEL B described in Special Warranty Deed from HUNTINGTON INVESTMENTS, INC., a Texas corporation, to HKW LAND HOLDINGS, L.P., a Texas limited partnership, as filed for record under Clerk's File No. 2007-26761, of the Land Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

BEGIN at a 1/2" iron rebar found for corner at the southeast corner of said PARCEL B, said corner also being the approximate location of the southeast corner of the said J. W. RAGLAND SURVEY, said corner also being the southwest corner the tract of land described in Special Warranty Deed to LEWISVILLE INDEPENDENT SCHOOL DISTRICT, as filed for record in Volume 892, Page 933 of the Land Records of Denton county, Texas;

THENCE N01°24'38"E, along the east boundary of said PARCEL B, the approximate east line of said J. W. RAGLAND SURVEY and the west boundary of said LEWISVILLE INDEPENDENT SCHOOL DISTRICT tract, at 1013.88 feet pass the northwest corner of said LEWISVILLE INDEPENDENT SCHOOL DISTRICT tract and the southwest corner of the tract of land described in Special Warranty Deed to STEWART CREEK APARTMENT, LTD., as filed for record under Clerk's File No. 98-R0021801, of the Land Records of Denton County, Texas, continuing for a total distance of 2124.46 feet to a City of Frisco GPS Monument found for corner at the northerly most southeast corner of the HILLS OF KINGSWOOD PHASE 1, according to the Final Plat thereof, as filed for record in Cabinet Y, Pages 549 through 556 of the Plat Records of Denton County, Texas:

THENCE in a southerly then westerly direction, along the southerly boundary of said HILLS OF KINGSWOOD PHASE 1, the following twenty five (25) courses:

- 1.) S27°05'38"W, a distance of 1222.59' feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 2.) N62°54'22"W, a distance of 739.80 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 3.) N19°06'17"W, a distance of 134.40 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 4.) S85°36'54"W, a distance of 650.53 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 5.) N05°56'35"W, a distance of 124.62 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner at a point on the arc of a curve having a radius of 140.50 feet, a central angle of 44°48'13", a chord bearing of S28°26'03"W, and a chord distance of 107.09 feet;
- 6.) along the arc of said curve to the left, a distance of 109.87 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 7.) S88°02'38"W, a distance of 63.39 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 8.) N01°57'22"W, a distance of 45.41 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner at the point of curvature of a curve having a radius of 55.50 feet, a central angle of 96°36'24", a chord bearing of N50°15'34"W, and a chord distance of 82.88 feet;

- 9.) along the arc of said curve to the left, a distance of 93.58 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 10.) S81°26'14"W, a distance of 16.05 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 11.) N08°33'46"W, a distance of 65.00 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner at a point on the arc of a curve having a radius of 215.50 feet, a central angle of 2°40'11", a chord bearing of N72°05'28"E, and a chord distance of 10.04 feet;
- 12.) along the arc of said curve to the left, a distance of 10.04 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 13.) N47°01'24"W, a distance of 527.94 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 14.) N53°16'59"W, a distance of 60.75 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner at a point on the arc of a curve having a radius of 1320.00 feet, a central angle of 1°11'44", a chord bearing of N36°07'09"W, and a chord distance of 27.54 feet;
- 15.) along the arc of said curve to the left, a distance of 27.54 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner at the point of reverse curvature and the beginning of a curve having a radius of 280.00 feet, a central angle of 11°08'12", a chord bearing of N41°05'23"E, and a chord distance of 54.34 feet;
- 16.) along the arc of said curve to the right, a distance of 54.42 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 17.) N43°20'31"W, a distance of 249.40 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner at a point on the arc of a curve having a radius of 1080.00 feet, a central angle of 1°06'10", a chord bearing of S31°35'33"W, and a chord distance of 20.79 feet;
- 18.) along the arc of said curve to the right, a distance of 20.79 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 19.) N47°46'29"W, a distance of 254.99 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 20.) N59°13'43"W, a distance of 60.00 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner at a point on the arc of a curve having a radius of 610.00 feet, a central angle of 5°18'15", a chord bearing of N33°25'25"E, and a chord distance of 56.45 feet;
- 21.) along the arc of said curve to the right, a distance of 56.47 feet to a City of Frisco GPS Monument found for corner;
- 22.) N40°08'59"W, a distance of 297.15 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 23.) N56°46'38"E, a distance of 17.01 feet to a 1/2" capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner;
- 24.) N28°31'20"W, a distance of 19.67 feet to a 1/2" capped iron rebar (JONES-BOYD) found for corner;
- 25.) N01°00'20"W, a distance of 105.47 feet

to a 1/2" capped iron rebar (JONES-BOYD) found for corner at the northwest corner of said HILLS OF KINGSWOOD and the northerly boundary of said PARCEL B;

THENCE in a westerly direction, along the northerly boundary of said PARCEL B, the following six (6) courses:

- 1.) S69°44'40"W, a distance of 364.18 feet to a concrete monument with 3-3/8" brass disc stamped G617-3 found for corner;
- 2.) S35°00'40"W, a distance of 192.70 feet to a 1/2" iron rebar found for corner;
- 3.) N42°54'20"W, a distance of 131.91 feet to a point for corner;
- 4.) S02°36'23"W, a distance of 966.51 feet to a concrete monument with 3-3/8" brass disc stamped G618-1 found for corner;
- 5.) N88°45'53"W, a distance of 1354.20 feet to a point for corner;
- 6.) S24°24'39"W, at a distance of 133.17 feet

pass the northwest corner of said PARCEL B and the northeast corner of said PARCEL A, and continuing for a total distance of 348.22 feet to a point for corner;

THENCE continuing in a southwesterly direction, along the northerly boundary of said PARCEL A, the following five (5) course:

- 1.) S69°53'42"W, a distance of 36.08 feet to a point for corner;
- 2.) S51°06'23"W, a distance of 173.21 feet to a point for corner;
- 3.) S72°09'24"W, a distance of 225.06 feet to a point for corner;
- 4.) S88°57'15"W, a distance of 148.81 feet to a point for corner
- 5.) S69°51'42"W, a distance of 159.65 feet

to a concrete monument with 3-3/8" brass disc stamped G610-1-3 found for corner at the northwest corner of said PARCEL A;

THENCE S24°31'32"E, along the west line of said PARCEL A, a distance of 1184.04 feet to a concrete monument with 3-3/8" brass disc stamped G610-1-4 found for corner at the southwest corner of said PARCEL A;

THENCE in an easterly direction, along the south boundary of said PARCEL A and then PARCEL B, the following four (4) courses:

- 1.) S88°46'05"E, at 279.05 feet pass the southeast corner of said PARCEL A and the southwest corner of said PARCEL B, for a total distance of 1622.25 feet to a 1/2" iron rebar found for corner;
- 2.) S02°17'40"W, a distance of 13.20 feet to a 1/2" iron rebar found for corner;
- 3.) S89°04'46"E, a distance of 2104.84 feet to a 1/2" iron rebar found for corner;
- 4.) S89°06'42"E, a distance of 1575.40 feet to back to the POINT OF BEGINNING and containing 218.208 acres of land, more or less.

SCHEDULE I

INITIAL BASE ASSESSMENTS ON IMPROVED LOTS

- | | |
|--|----------------------|
| 1. Lots with street frontage of less than 90 feet | \$1,800.00 per annum |
| 2. Lots with street frontage of 90 feet or more
but less than 110 feet | \$2,000.00 per annum |
| 3. Lots with street frontage of 110 feet or more
but less than 130 feet | \$2,400.00 per annum |
| 4. Lots with street frontage of 130 feet or more | \$3,000.00 per annum |

For purposes of this Schedule I, the term "street frontage" shall mean the linear footage of the Lot along the street which the primary front of the house faces.