

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR
HIGHLANDS OF NORTHLAKE HOMEOWNER ASSOCIATION, INC.**

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR
HIGHLANDS OF NORTHLAKE HOMEOWNER ASSOCIATION, INC.

STATE OF TEXAS §
 §
COUNTY OF DENTON §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made by RCM HIGHLANDS, LP, a Texas limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the developer and sole owner of all that certain real property commonly known as The Highlands (the "Addition"), an Addition to the Town of Northlake (the "Town"), Denton County (the "County"), Texas, said property being more specifically described on Exhibit "A" attached hereto and made a part hereof for all purposes. Said real property is herein called "The Highlands" and is herein also referred to from time to time as the "Subdivision";

WHEREAS, the Property shall consist of (i) all residential Lots (hereinafter defined) located in the Subdivision, and (ii) all Common Areas (hereinafter defined) located within the Subdivision;

WHEREAS, Declarant desires and proposes to establish and implement plans and aesthetic considerations in order to create a residential community on the Property and, to this end, desires to subject the Property to the covenants, conditions, restrictions and easements hereinafter set forth;

WHEREAS, Declarant desires to impose said covenants, conditions and restrictions on the Property and yet maintain reasonable flexibility to respond to changing and unforeseen circumstances as to control and maintain the quality and distinction of the Property;

WHEREAS, Declarant has deemed it desirable to create a homeowners' association to own and/or maintain the Common Areas (hereinafter defined) and to which would be delegated and assigned the powers of administering and enforcing the covenants, conditions and restrictions contained herein and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused or will cause such homeowners association to be incorporated under the Texas Business Organizations Code, under the name "Highlands of Northlake Homeowner Association, Inc." (the "Association").

NOW, THEREFORE, Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration as follows AND IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT ALL LOTS SITUATED WITHIN THE PROPERTY SHALL BE SUBJECT TO THIS DECLARATION AND ALL OWNERS OF LOTS SHALL BE SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS SET FORTH HEREIN, AND THE ASSOCIATION FORMED PURSUANT HERETO SHALL BE MANDATORY FOR ALL OWNERS OF ALL LOTS AND ALL OF SUCH OWNERS MUST BE A PART OF THE ASSOCIATION.

Declarant has established this Declaration to provide a governance structure and a system of standards and procedures for the overall development, administration, maintenance and preservation of the Property.

ARTICLE i
CREATION OF THE COMMUNITY

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A", intends by recording this Declaration to create a general plan of development for the Property. This Declaration provides a reasonable procedure for the future expansion of the subdivision to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance and preservation of the Property. An integral part of the development plan is the creation of the nonprofit corporation to be known as Highlands of Northlake Homeowners Association, Inc., an association comprised of all owners of real property in the Addition to own, operate and/or maintain various Common Areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

This document does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act, Tex. Prop. Code Ann., Section 82.001, *et seq.*

1.2. Binding Effect and Term.

All property described in Exhibit "A," and any additional property which is annexed into the Subdivision in the future by recording one or more Supplemental Declarations, shall be owned, conveyed, used, and otherwise encumbered subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all persons having any right, title or interest in any portion of the Property, their heirs, successors, successors-in-title and assigns.

This Declaration shall be enforceable by Declarant, the Association, any Owner under the provisions herein and their respective legal representatives, heirs, successors and assigns for a term of 30 years from the date the Declaration is recorded. After such 20-year period, this Declaration shall extend automatically for successive 10-year periods unless a majority of the then Owners sign and record, within the year preceding any extension, an instrument which terminates this Declaration.

Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement. If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

1.3. Governing Documents.

The Governing Documents may be supplemented by additional covenants, restrictions and easements applicable to particular Phases within the Subdivision. Nothing in this Section shall preclude the recording of a Supplemental Declaration or other instrument applicable to any portion of the Subdivision (with the consent of the Owner of such property) which contains additional restrictions or more restrictive provisions; provided, any such Supplemental Declaration is subject to Article 11 unless otherwise permitted by Article 12. The Association may, but shall not be required to, enforce any such covenants, restrictions or other instruments, which are otherwise enforceable.

The Governing Documents shall apply to Owners as well as occupants of Lots and their respective tenants, guests and invitees. Any lease of a Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of the Governing Documents.

In the event of a conflict between Texas law, the Certificate of Formation of the Association, this Declaration and the Bylaws of the Association, the provisions of Texas law, this Declaration, the Articles and the Bylaws (in that order) shall prevail. In the event of a conflict between or any of the Governing Documents and any additional covenants or restrictions, and/or the provisions of any other rules or policies governing any Phase, the Governing Documents shall control.

ARTICLE 1
DEFINITIONS

DEFINITIONS. The following words and phrases, whether or not capitalized (unless the context clearly indicates otherwise), have specified meanings when used in the Governing Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

- 1.1 "ACC" means the Architectural Control Committee of the Association.
- 1.2 "Assessment" means any charge levied against a lot or owner by the Association, pursuant to the Governing Documents or State law.
- 1.3 "Association" means the association of owners of all lots in the Property, initially organized as Highlands of Northlake Homeowners Association, Inc., a Texas nonprofit corporation.
- 1.4 "Board" means the Board of Directors of the Association.
- 1.5 "Builder" means any homebuilder constructing the initial Residence upon a Lot in the normal course of conducting its business for profit.
- 1.6 "Town" means the Town of Northlake, Texas, in which the Property is located.
- 1.7 "County" means Denton County, Texas, in which the Property is located.
- 1.8 "Declarant" means RCM HIGHLANDS, LP, a Texas limited liability company, the developer of the Property, and/or the successors and assigns of Declarant, which acquire any portion of the Property for the purpose of development and which are designated a Successor Declarant by Declarant or by any such successor or assign, in a recorded document.
- 1.9 "Declarant Control Period" means that period of time, beginning the date this Declaration is recorded, and expiring on the date Declarant no longer owns a Lot in the Subdivision.
- 1.10 "Declaration" means this document, as it may be amended from time to time.
- 1.11 "Design Guidelines" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to all aspects of construction, placement, location, alteration, maintenance and design of any improvements within the Property, and all amendments, modification, supplements and interpretations thereof.
- 1.12 "Development Period" means the 30-year period beginning the date this Declaration is recorded, during which the Property is being developed, constructed or marketed. The Development Period terminates automatically when a Certificate of Occupancy is obtained on every lot in the Property. Declarant may terminate the Development Period at any time by recording a notice of termination.
- 1.13 "Governing Documents" means, singularly and collectively as the case may be, this Declaration and any applicable Supplemental Declaration, the Plat, the Association's Bylaws, the Association's Certificate of Formation, and the rules of the Association, as any of these may be

amended from time to time. Any appendix, exhibit, schedule or certification accompanying a Government Document is part of that Governing Document.

- 1.14 "Lot" means a portion of the Property intended for independent ownership on which there is or will be constructed a dwelling, as shown on the Plat. Where the context indicates or requires, "Lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the lot. "Lot" shall mean and refer to any one (1) of the enumerated plots or tracts of land shown upon the Final Plat, and "Lots" shall mean and refer to more than one (1) of same, and shall include all platted developed Lots as well as all platted undeveloped Lots.
- 1.15 "Majority" means more than half.
- 1.16 "Managing Agent" means any person or entity who has been engaged and designated by the Board to manage the daily affairs and operations of the Association.
- 1.17 "Member" means a member of the Association.
- 1.18 "Owner" means a holder of a recorded fee simple title to a Lot. Declarant is the initial owner of all Lots. After the Lot is sold to the Builder the Builder becomes the Owner of the Lot. Contract sellers and mortgagees who acquire title to a lot through a deed in lieu of foreclosure or through judicial or nonjudicial foreclosure are owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not owners.
- 1.19 "Phase" means a particular phase developed upon the Property. Declarant may impose additional or different restrictions on each Phase. If Declarant annexes additional property into the Property as provided in Section 12.3, it may designate the area annexed as a particular Phase, and may impose, as provided in Section 12.3, additional or different restrictions on such area.
- 1.20 "Plat" means all plats, singularly and collectively, recorded in the Real Property Records of Denton County, Texas, and pertaining to the Subdivision, including (i) the preliminary Plat, and thereafter the Final Plat, for any Phase of the Property submitted to and approved by the Town, or any other applicable governmental entity; (ii) after recordation thereof, the final Plat for any Phase of the Property as recorded in the Records of Denton County, Texas; (iii) any replat of, or amendment to, the foregoing made by Declarant in accordance with this Declaration; and (iv) any final recorded Plat of any additional property annexed into the Property pursuant to Section 12.3. Any of the specified definitions of Plat include, without limitation, any and all dedications, limitations, restrictions, easements and reservations shown on the Plat, as it may be amended from time to time.
- 1.21 "Property" means all the land now or in the future which is made subject to this Declaration and all improvements, easements, rights and appurtenances to such land. A legal description of the Property is attached hereto as Exhibit "A." Currently, the Property includes every residential lot thereon and it is anticipated that additional land may be added to the Property in the future pursuant to the terms of this Declaration.
- 1.22 "Residence" or "Residential Dwelling" or "Dwelling" means a single family detached residence constructed upon a Lot.
- 1.23 "Resident" means an occupant of a dwelling, regardless of whether the person owns the lot.
- 1.24 "Rules" means rules and regulations adopted by the board in accordance with the Governing Documents.

- 1.25 "Street" means any paved road that is typically within a fifty-foot (50') right-of-way and serves the front or side of a Lot upon which a Residence is constructed.
- 1.26 "Structure" means any structure (other than a Residence), fence, driveway, sidewalk, irrigation system, wall, tennis court, swimming pool, outbuilding, playground equipment or other improvement of any kind or type.

ARTICLE 2
PROPERTY SUBJECT TO DOCUMENTS

- 2.1 **PROPERTY.** The real property described in Exhibit "A" is held, transferred, sold, conveyed, leased, occupied, used, insured and encumbered subject to the terms, covenants, conditions, restrictions, liens and easements of this Declaration, including Declarant's representations and reservations as set forth herein, which run with the Property and bind all parties having or acquiring any right, title or interest in the Property, their heirs, successors and assigns and to the benefit of each owner of the Property.
- 2.2 **ADDITIONAL PROPERTY.** Additional real property may be annexed to the Property and subjected to this Declaration and the jurisdiction of the Association by the Declarant as permitted herein. Annexation of additional property is accomplished by recording a declaration of annexation, including an amendment to Exhibit "A", in the Denton County real property records.
- 2.3 **PLAT DEDICATIONS, EASEMENTS AND RESTRICTIONS.** In addition to the easements and restrictions contained in this Declaration, the Property is subject to the dedications, limitations, easements, restrictions, maintenance agreements and reservations shown or cited on the Plat, which is incorporated herein by reference. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by the plat, and further agrees to maintain any easement that crosses his lot and for which the Association does not have express responsibility.
- 2.4 **COMMON AREAS.** The Common Area of the Property consists of the following components on or adjacent to the Property, even if located on a lot or a public right-of-way:
- 2.4.1 All of the Property, save and except the platted residential Lots, and including all the platted non-residential tracts save and except public improvements conveyed to the Town, including but not limited to streets and utilities, and including one or more tracts of open space consisting of approximately 51 acres of land;
- 2.4.2 The formal entrances to the Property, including (if any) the signage, landscaping, electrical and water installations, planter boxes and fencing;
- 2.4.3 Any modification, replacement or addition to any of the above-described areas and improvements; and
- 2.4.4 Personal property owned by the Association, such as any books and records, office equipment, and pool supplies and furniture (if any).

ARTICLE 3
PROPERTY EASEMENTS AND RIGHTS

- 3.1 **GENERAL.** In addition to the other easements and rights established by the Governing Documents, the Property is subject to the easements and rights contained in this Article.

- 3.2 **EASEMENT FOR ENTRY FEATURE AND SCREENING WALL.** The Association is hereby granted a perpetual easement (the "Maintenance Easement") over each lot that abuts or contains a portion of the Property's formal entrances or the Property's screening wall, fence or berm, for the purposes stated in this Section, regardless of whether or how the plat shows the easement, entry features or screening wall, fence or berm.
- 3.2.1 **Purpose of Easement.** The purpose of the Maintenance Easement is to provide for the existence, repair, improvement and replacement of the Property's formal entrances and screening wall, fence or berm to be maintained by the Association as a Common Area. In exercising this Maintenance Easement, the Association may construct, maintain, improve and replace improvements reasonably related to the screening or entrance of a residential subdivision, including: access gates, screening walls, fences and/or berms; planter beds, landscaping and plant material; electrical and water meters and equipment, including light fixtures and sprinkler systems; and signage relating to the Property.
- 3.3 **MONUMENT EASEMENT AND STREETLIGHT EASEMENT.** The Association is granted a perpetual easement (the "Monument Easement" or "Streetlight Easement," as the context requires) over each lot that contains a standard street name monument ("Monument Lot") and/or a standard streetlight ("Streetlight Lot") for the purpose of repairing, removing and replacing the monument and/or streetlight as deemed necessary by the Association. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much of the surface of the Monument Lot and/or Streetlight Lot as may be reasonably necessary for the Association to perform its contemplated work on the Monument Easement and/or Streetlight Easement. The owner of a Monument Lot and/or Streetlight Lot may not remove, deface, cover or screen the monument or streetlight or otherwise interfere with the intended use and purpose of the monument and/or streetlight.
- 3.4 **OWNER'S MAINTENANCE EASEMENT.** Every owner is granted an access easement over adjoining Lots and Common Areas for the maintenance or reconstruction of his dwelling and other improvements on his lot, provided exercise of the easement does not damage or materially interfere with the use of the adjoining lot or common area. Requests for entry to an adjoining Lot or Common Area must be made to the owner of the adjoining lot, or the Association in the case of the Common Areas, in advance for a time reasonably convenient for the adjoining Owner, who may not unreasonably withhold consent. If an Owner damages an adjoining Lot or Common Area in exercising this easement, the Owner is obligated to restore the damaged property to its original condition, at his expense, within a reasonable period of time.
- 3.5 **OWNER'S INGRESS/EGRESS EASEMENT.** Every Owner is granted a perpetual easement over the Property's streets as may be reasonably required for vehicular ingress to and egress from his Lot.
- 3.6 **ASSOCIATION'S ACCESS.** Each Owner grants to the Association, the Board and the Declarant the right to access, repair and maintain all facilities and improvements within any wall, entry, fence, landscape or other similar easement as recorded on any Plat. Furthermore, the Association and the Developer are granted an easement of access and entry to every Lot and Common Area to perform any other duties required by the Governing Documents. By acquisition of a Lot, each Owner hereby grants, creates and conveys unto the Association, the other adjacent Owners and the Declarant a perpetual Drainage Easement over, through, under and across the Owner's Lot for the purpose of permitting runoff and/or storm water to drain from other adjacent Lots over, through, under and across the Owner's Lot(s). Without limiting the foregoing, in order to facilitate drainage over the Property over, through, under or across the Owner's Lot, each Owner hereby agrees that the Declarant or the Association, as the case may be, shall have the right to enter onto the Owner's Lot at any time to (i) prevent possible interference with the Drainage Easement and to remove possible hazards from the Drainage Easement area, (ii) prevent the construction or placement of

any building, structure or other obstruction with the Drainage Easement area which may endanger or interfere with the efficient and convenient use of the Drainage Easement, (iii) grade, improve, construct, reconstruct, repair and perpetually maintain swales within the Drainage Easement area, and (iv) regrade portions of the Drainage Easement area necessary or appropriate to permit drainage as generally described herein or as approved or required by appropriate governmental authorities. Notwithstanding any of the foregoing rights of the Association or the Developer, each Owner hereby agrees to maintain the Drainage Easement area at such Owner's sole cost and expense. If any structures or other obstructions are constructed, created or placed by any Owner within the Drainage Easement area without the prior written consent of the Association and the Declarant, the Declarant or the Association shall have the right to remove such structure or obstruction at the sole cost of such Owner.

- 3.7 UTILITY EASEMENT. The Association may grant permits, licenses and easements over common areas for utilities, roads and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair or replacement of utility lines and equipment, and to do anything else reasonably necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior written notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, fiber optic cable, electricity, gas, telephone, master or cable television, and security.
- 3.8 SECURITY. The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and its directors, officers, committees, agents and employees are not providers, insurers or guarantors of security within the Property. Each Owner and Resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and its directors, officers, committees, agents and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and its officers, directors, committees, agents and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.
- 3.9 RISK. Each Resident uses all common area amenities (if any) at his own risk. Each Resident is solely responsible for his own safety and that of his guests. The Association and the Declarant disclaims any and all liability or responsibility for injury or death occurring from use of the Common Area. By acquisition of a Lot, each Owner acknowledges that he has read the Governing Documents and accepts his sole responsibility for his own safety and that of his guests when using the Common Area, and assumes any and all risks for loss, injuries and death arising out of such use.
- 3.10 RESIDENTIAL CONSTRUCTION LIABILITY ACT. Without waiving any rights under law or equity, Owners acknowledge, covenant and agree that residential construction defect claims regarding any residence or Lot against the Declarant and/or Builder are controlled by the Texas Residential Construction Act (Texas Property Code § 27.00 *et. seq.*, as amended), which preempts the Texas Deceptive Trades Practices Act (Texas Business & Commerce Code § *et. seq.*, as amended) and any other law.

- 3.11 **EPA/TCEQ COMPLIANCE.** The Owner of each Lot and/or the Builder of each residence agree to comply with all EPA, TCEQ or other federal or state regulatory authority rules and regulations regarding erosion control and compliance with a Storm Water Pollution Prevention Plan affecting the Lots (the "Plan"), which include elements necessary for compliance with the nationwide general permit for construction activities administered by the EPA under the National Pollutant Discharge Elimination System. Each Owner and/or Builder acknowledges that the Declarant will not bear the cost or responsibility for complying with the Plan on any Lot upon the sale of that particular Lot within the subdivision to each Owner and/or Builder. The cost and responsibility to comply with the Plan shall be the responsibility of the Owner of each Lot or the Builder of each residence and the responsible Owner and/or responsible Builder agrees to reimburse Declarant the cost of applicable EPA fines, if any, due to said Owner's and/or said Builder's non-compliance with the Plan.

ARTICLE 4
ARCHITECTURAL COVENANTS AND CONTROL

- 4.1 **PURPOSE.** Because the Lots are part of a single, unified community, the Association has the right to regulate the design, use and appearance of the Lots and Common Areas in order to preserve and enhance the Property's value and architectural harmony, and to promote and ensure the level of taste, design, quality and harmony by which the Property is developed and maintained.
- 4.2 **ARCHITECTURAL CONTROL COMMITTEE.** The Architectural Control Committee (the "ACC") consists of a minimum of three (3) persons but not more than five (5) appointed by the Declarant during the Development Period. After the Development Period, the ACC consists of three (3) persons but not more than five (5) appointed by the Board, pursuant to the Bylaws, or, at the Board's option, the Board may act as the ACC. If the Board acts as the ACC, all references in the Governing Documents to the ACC are construed to mean the Board. Members of the ACC need not be Owners or Residents.
- 4.3 **LIMITS ON LIABILITY.** The ACC has sole discretion with respect to taste, design and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith and which are not arbitrary or capricious. The ACC is not responsible for (1) errors in or omissions from the plans and specifications submitted to the ACC, (2) supervising construction for the Owner's compliance with approved plans and specifications or (3) the compliance of the Owner's plans and specifications with Town codes and ordinances, state and federal laws.
- 4.4 **PROHIBITION OF CONSTRUCTION, ALTERNATION AND IMPROVEMENT.** No building, wall or any structure or improvement shall be commenced, erected, placed or substantially altered on any Lot, nor shall any exterior painting (other than repainting a structure the same or similar color) of, exterior addition to, or substantial alteration of, such items be made until all plans and specifications and a plot plan have been submitted to and approved in writing. To request ACC approval, an Owner must make written application and submit two (2) identical sets of plans and specifications showing the nature, kind, share, color, size, materials and locations of the work for which approval is sought. Final plans and specifications shall be submitted in duplicate by certified mail, return receipt requested, to the ACC. The plans and specifications shall depict the nature, kind, shape, height, materials and location of all landscaping and improvements. The documents shall specify any requested variances from the requirements set forth in this Declaration. The ACC is authorized to request the submission of samples of proposed construction materials and such other information as it deems necessary to make its determination. The ACC may also charge a fee for the review of the application in the amount of Two Hundred Fifty-Five and 00/100 Dollars (\$250.00). At such time as the plans and specifications meet the approval of the ACC, one complete set of plans and specifications will be retained by the ACC for up to three (3) years only, and the other complete set of plans and specifications shall be marked

"Approved", signed by a representative of the ACC and returned to the Lot Owner or his designated representative. If disapproved by the ACC, one set of such plans shall be returned marked "Disapproved" and shall be accompanied by a reasonable statement of the reasons for disapproval, which statement shall be signed by a representative of the ACC. Any modification of the approved set of plans and specifications must again be submitted to the ACC for its approval. The ACC's approval or disapproval, as required herein, shall be in writing. In no event shall the ACC give verbal approval of any plans and specifications.

- 4.5 **DEEMED APPROVAL.** If the ACC fails to respond in writing (negatively, affirmatively or requesting information) within fourteen (14) days after the ACC's actual receipt of the Owner's application, the Owner may submit a second request for processing of its original application to the Board. If the Board fails to respond within thirty (30) days after the Board's actual receipt of the Owner's second request, the Owner's application is deemed approved. The Owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his application and provided he initiates construction of the improvement within 90 days and completes the improvements in a timely manner. In the event the ACC's approval is deemed approved, the burden is on the Owner to document the Board's actual receipt of the Owner's initial application and second request. A signed certified mail receipt may establish the ACC's receipt of the plans. Any Builder who is constructing residences on multiple Lots shall have the option of submitting a master set of final plans and specifications for all of the residences it intends to construct within the Property to the ACC in accordance with the provisions of this paragraph. Once the master set of plans has been approved, the Builder shall be allowed to construct residences in accordance with such approved plans and no further submittals shall be required unless material deviations have been made to such approved plans.
- 4.6 **ACC GUIDELINES.** The Association may publish architectural restrictions, guidelines and standards developed by the ACC, subject to revision from time to time including revisions to reflect changes in technology, style and taste. The Association may publish such documents on its own initiative but shall not be required to do so. Such publications are considered *advisory* publications for the ACC but shall not be interpreted as final or as the ultimate authority as it is the Declarant's intention that the ACC have discretionary authority when need be. Any publication cited, used or followed from time to time is not to be regarded as limiting the authority and/or the discretion of the ACC. Furthermore, in light of the ACC's discretion to deviate from such publications as need be, publications will not be considered public property or subject to review by anyone other than those comprising the ACC. The Association, acting through the ACC, has the right to establish and enforce architectural restrictions, guidelines and standards relating to every aspect of proposed or existing improvements on a Lot, including but not limited to dwellings, fences and landscaping, and further including replacements or modifications of original construction or installation.

ARTICLE 5

RESIDENTIAL CONSTRUCTION AND PERMITTED USES

- 5.1 **COMPLIANCE REQUIREMENTS.** All improvements on a Lot must (1) comply with any applicable Town ordinances and codes, (2) have a building permit issued by the Town, if any type of improvements requires a permit, (3) comply with the Design Guidelines, attached hereto as Exhibit "D" and (4) have the ACC's prior written approval. These four requirements are independent, i.e. one does not ensure or eliminate the need for another. The ACC's prior written approval is a mandatory requirement for any variance and/or improvement constructed on every Lot.
- 5.2 **VARIANCE.** The use of the Property is subject to the restrictions in this Article and subject to rules adopted pursuant to this Article. The Board or the ACC, as the case may be, may grant a

variance or waiver of a restriction or rule on a case-by-case basis and may limit or condition its grant.

- 5.3 **HOUSES.** The principle improvement on a Lot must be one detached single-family dwelling. The dwelling size, setbacks and exterior materials must comply with the applicable ordinance and with any higher standards established by the ACC, and comply with the Design Guidelines.
- 5.4 **MINIMUM FLOOR AREA.** The total air-conditioned living area of the main residential structure constructed on each Lot shall comply with the Design Guidelines.
- 5.5 **BUILDING MATERIALS.** Except to the extent a higher percentage is required by the Town, the total exterior wall area (as used herein the term "total exterior wall area" shall exclude windows and doors) of each building constructed or placed on a Lot shall comply with the Design Guidelines. Roofing shall also comply with the Design Guidelines.
- 5.5.1 **CHIMNEYS.** All fireplace flues, smoke stacks and spark arrestors shall be completely enclosed and concealed from public view in finished chimneys. The material of the chimneys is to be brick, and comply with the Design Guidelines.
- 5.6 **GARAGES.** Must comply with the Design Guidelines.
- 5.7 **NEW CONSTRUCTION.** Dwellings must be constructed on the Lot. A dwelling or addition constructed elsewhere may not be moved onto a Lot. The construction of a dwelling must be started within 90 days after the ACC approves the dwelling's plans and specifications, and comply with the Design Guidelines. At the start of construction – but not before – building material to be used in the construction may be stored on the Lot. Once started, the dwelling and all improvements on the Lot must be completed six months from commencement of construction.
- 5.8 **ACCESSORIES.** Installation of all exterior items and surfaces, including address numbers, decorative hardware, fencing, walls, external ornamentation, light fixtures, and exterior paint and stain, is subject to the ACC's prior approval, including approval of design, color, materials and location, and must comply with the Design Guidelines.
- 5.9 **FENCES AND WALLS.** This Section is subject to the ACC's right to adopt additional or different specifications for construction or reconstruction of fences. All fences must comply with the Design Guidelines. Wood fences may be required to be stained off-site prior to the initial installation but once installed on-site staining for maintenance purposes is allowed. All fence designs differing from the design guidelines must be approved in writing by the ACC prior to installation.
- 5.10 **RETAINING WALLS.** Retaining walls must be constructed entirely with ACC-approved materials; however, railroad ties may not be used for a retaining wall visible from a street. Fences may not be constructed between a dwelling's front building line and the street. All fence design, location, height, material and color must be approved in writing by the ACC prior to installation, and must comply with the Design Guidelines.
- 5.11 **UTILITIES.** All utility lines and equipment must be located underground, except for (1) elevated or surface lines or equipment required by a public utility or the Town; (2) elevated or surface lines or equipment installed by Declarant as part of the initial development of the Property; and (3) surface equipment necessary to maintain, operate or read underground facilities, such as meters, risers, service pedestals and transformers. The ACC may require that utility meters, risers, pedestals and transformers be visually screened from the street and neighboring lots. Each Lot shall be connected to and shall use Town water and sanitary sewage systems. Individual water

supply and sewage disposal systems are not permitted. All utility lines, meters, risers, service pedestals and transformers must comply with the Design Guidelines.

- 5.12 LOT MAINTENANCE BY OWNERS. Both the Lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring lots. The ACC is the arbitrator of acceptable appearance standards. Each Owner shall maintain the exterior of all buildings, fences, walls and other improvements on his Lot in good condition and repair, and shall replace worn and rotten parts, and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate in an unattractive manner. All fences shall be kept neat, clean and in good repair. Any fence which is damaged, leaning, or otherwise not in good repair shall be immediately repaired.
- 5.13 ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through its Board, is granted the right to adopt, amend, repeal and enforce reasonable rules and penalties for infractions thereof regarding the occupancy, use, disposition, maintenance, appearance and enjoyment of the Property. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish Rules and penalties for infractions thereof governing:
- a. Use of the Common Areas.
 - b. Hazardous, illegal or annoying materials or activities on the Property.
 - c. The use of the Property-wide services provided through the Association.
 - d. The consumption of utilities billed to the Association.
 - e. The use, maintenance and appearance of exteriors of dwellings and Lots.
 - f. The occupancy and leasing of dwellings.
 - g. Animals.
 - h. Vehicles.
 - i. Disposition of trash and control of vermin, termites and pests.
 - j. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Governing Documents, or the quality of life for Residents.
- 5.14 ACCESSORY STRUCTURES. Without the prior written approval of the ACC, accessory structures – such as dog houses, gazebos, storage buildings, playhouses and greenhouses – are prohibited (not allowed). Accessory structures may not be located in front yards or in unfenced portions of side yards facing streets. Accessory Structures must use the same exterior building materials as the home on the lot and match the architectural style of the home. If an accessory structure is installed in violation of this Section, the ACC reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property and may require the Owner to screen it or to remove it. If the ACC grants approval for such structures, the approval may be revoked if the structure is not maintained, or if it becomes unsightly.
- 5.15 ANIMALS. No animals or livestock shall be raised, bred or kept on the Property except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the Property so that no person shall quarter on the premises cows, horses, hogs, pigs (including pot-bellied pigs), guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the quietude, health or safety of the Community. Pets must be restrained or confined by their Owner to the back yard of the applicable Lot, inside a fenced area or within the residence erected thereon, provided any such pets may be walked only if a leash restrains such pet. . All animals must be properly tagged for identification. Unless the Rules provide otherwise, the subsections of this Article shall govern animals at the Property.

- 5.15.1 Disturbance. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residences on other Lots.
- 5.15.2 Waste Removal. Unless the Rules provide otherwise, a Resident must prevent his pet from relieving itself on the Common Area or the Lot of another Owner. Each Resident is responsible for the removal of his pet's wastes from the Property.
- 5.15.3 Liability. An Owner is responsible for any property damage, injury or disturbance caused or inflicted by an animal kept on the Lot. The Owner of the Lot on which an animal is kept is deemed to indemnify and to hold harmless the Board, the Declarant, the Builder(s) and the Association from any loss, claim or liability resulting from any action of the animal or arising by reason of keeping the animal on the Property.
- 5.16 DRAINAGE. No person may interfere with the established drainage pattern over any part of the Property unless the Board has approved an adequate alternative provision for proper drainage. Further, each Owner covenants to honor any drainage easement affecting his Lot as shown on the plat or as required by any master drainage plan enacted by the Town. Specifically, each Owner agrees (1) to maintain the integrity of the drainage design of his Lot by not filling or altering drainage swales that are constructed on the Lot as required by the Town or by the ACC; (2) to not construct fences that impede or deflect the flow of water in drainage areas by placing objects or by planting excessive landscaping in those areas; and (3) to conform the design and construction of sidewalks, driveways and foundations in drainage areas to the Town's drainage requirements.
- 5.17 DRIVEWAYS. The driveway portion of a Lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the Board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of boats, trailers and inoperable vehicles; or (2) for repair or restoration of vehicles other than routine short-term maintenance.
- 5.18 BASKETBALL GOALS. Without the ACC's prior written approval, basketball goals and other recreational or sporting equipment may not be used, attached, mounted, or installed in a front yard, on a front driveway, in an unfenced portion of a side yard, or on the street side exterior portion of a dwelling. If the ACC grants approval for such equipment, the approval may be revoked if the equipment is not maintained, or if it becomes unsightly.
- 5.19 LANDSCAPING. All landscaping and irrigation must be installed no later than thirty (30) days following completion of the house. All trees and landscaping shall comply with the Lot Landscape Plan in the Design Guidelines. "Completion" as is used in this Section 5.19 shall be defined as the date upon which a Certificate of Occupancy is issued for the structure/house.
- 5.20 LANDSCAPE MAINTENANCE. After the installation of the landscaping on a Lot by a builder, the Owner of the Lot shall thereafter maintain the yard in a sanitary and attractive manner, including adequate watering and immediate replacement of dead vegetation, including front yard trees (must be replaced with the same species), and shall edge the street curbs that run along the Lot boundary lines. Yards must be kept mowed and trimmed at regular intervals so as to maintain the Lot in a neat and attractive manner. No vegetables shall be grown in any portion of a Lot yard that faces a street or is not screened by fencing built in accordance with the terms hereof. No Ivy plant material shall be grown on any portion of the outside of the front façade of the home. Grass shall not be permitted to grow to a height of greater than six inches (6") upon any Lot except in the Native Landscaping & Trail Easement which cannot grow to a height greater than twelve inches (12").
- 5.21 MAILBOXES. All mailboxes shall be installed by a mailbox vendor selected by the ACC. . Notwithstanding, unless otherwise required by law or U.S. Postal service regulations, all

mailboxes must be exclusively constructed with use of the following materials: brick or stone matching the house located on the Lot or such other material as may be required by the applicable postal authority and approved by the ACC.

- 5.22 **LEASING OF HOMES.** An Owner may lease the dwelling on his Lot, subject to the Governing Documents (whether or not a written lease sets forth provisions for same), provided that no more than three people who are not related to each other as either a parent, child, spouse, or sibling may reside in the dwelling, and the residents may not park more than five motor vehicles at the residence. An Owner is responsible for providing his tenant with copies of the Governing Documents and notifying him of changes thereto. An Owner is also responsible for the tenant's and/or his invitees' failure to comply with the Governing Documents and any and all federal, state or local laws and regulations.
- 5.23 **NOISE AND ODOR.** A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Lots. The Rules may prohibit the use of noise-producing security devices.
- 5.24 **OCCUPANCY.** Other than the completed principle dwelling, no other structure on a Lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, campers and storage sheds.
- 5.25 **RESIDENTIAL USE.** The use of a Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using a dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the Lot by employees or the public in quantities that materially increase the number of vehicles parked on the street; and (5) the uses do not interfere with Residents' use and enjoyment of neighboring lots.
- 5.26 **TELEVISION AND ANTENNAS.** Each Resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, and cable or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another Lot are prohibited within the Property, and shall be located inside the structure (such as in an attic or garage). The Owner of each Lot and/or residence hereby waives all rights, federal or other, for operating or maintaining ham radio antennas within the Property unless the ham radio antenna is not visible from the street or another lot.
- 5.26.1 **Limited Exceptions.** The following are the only areas for attachment and/or mounting that will be allowed as exceptions to the foregoing language in this Section:
- a. Attachment, location or mounting in a fenced yard so long as it is not visible from a street or from another lot; and
 - b. Attached to or mounted on the rear wall of a structure below the eaves, on the residence or in a tree, provided it is mounted in the most inconspicuous location when viewed from the front of the residence.

In the event a dispute arises with regard to the determination of the "most inconspicuous location" of any such mounted satellite dish, a majority of the Board of Directors shall determine the most inconspicuous location and such determination shall be final. No satellite dish in excess of twenty-five inches (25") shall be permitted on any Lot.

- 5.27 TEMPORARY STRUCTURES. Improvements or structures of a temporary or mobile nature, such as tents, portable sheds, and mobile homes may not be placed on a Lot if visible from a street or another Lot. However, an Owner or Owner's contractor may maintain a temporary structure (such as a portable toilet or construction trailer) on the Lot during construction of the dwelling.
- 5.28 VEHICLES. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and Rules adopted by the Board. The Board may adopt, amend and repeal rules regarding the types, sizes, numbers, conditions, uses, appearances and locations of vehicles on the Property. Without prior written Board approval, the following types of vehicles and vehicular equipment (mobile or otherwise) may not be kept park or stored anywhere on the Property if the vehicle is visible from a street or from another lot: mobile homes, motor homes, buses, trailers, boats, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles with advertising signage, vehicles which are not customary personal passenger vehicles, and any vehicle which the Board deems to be a nuisance, unsightly or inappropriate. This restriction includes overnight parking on streets and driveways. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a dwelling. Vehicles that transport inflammatory, bio-hazardous or explosive cargo are prohibited from the Property at all times. The Association may affect the removal of any vehicle in violation of this Section or the Rules without liability to the owner or operator of the vehicle. All vehicles parked on any Lot within the view of public shall be in good operating condition, shall have current license plates, inspection stickers and registrations and shall be in daily use as motor vehicles on the streets and highways of the State of Texas.
- 5.29 WINDOW TREATMENTS. Without the ACC's prior written approval, the color of all window treatments within the dwelling that are visible from the street or another dwelling must appear in a neutral color, such as white, cream, beige, brown or gray. Solar screens are allowed with ACC approval only.
- 5.30 HOLIDAY DÉCOR. Lighting and/or decorations on a Lot...may not be displayed more than six weeks in advance of that specific holiday and must be removed within in thirty days after the holiday has ended.
- 5.31 CONSTRUCTION, RESTRICTIONS AND PROHIBITED USES. The ACC's prior written approval for any variance and/or improvements constructed on every Lot must have the characteristics described herein, which may be treated as the minimum requirements for improving and using a Lot. The ACC and the Board may promulgate additional rules and restrictions, as well as interpretations, additions and specifications of the restrictions contained in this Article.
- 5.31.1 No temporary dwelling, shop, trailer or mobile home of any kind or any improvements of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment) shall be permitted on any Lot except that the Builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a given Lot during construction of the residence on that Lot or on a different Lot as agreed to between the Builder or contractor and the Declarant. No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected.
- 5.31.2 No Lot or other area on the Property shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment, dissembled or inoperative cars, other vehicles or discarded appliances, furniture and/or grass clippings and tree trimmings. Trash, garbage or other

waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or other disposal of such material shall be kept in clean and sanitary condition. Materials incident to the construction or improvements may be stored on Lots during construction so long as construction progresses without undue delay. Put out for pick-up no earlier than 6:00 p.m. the night before trash pick-up, and returned for storage no later than 12:00 midnight the day of trash pick-up; and stored in the garage out of the public view; or stored in the backyard out of public view; or stored on the side of the home, screened from public view by shrubbery which blocks the view from the street, or other screening as approved in writing by the Architectural Control Committee.

- 5.31.3 No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any front wall or window of a residence, and no evaporative cooler shall be installed on the front wall or window of a residence. All air-conditioning equipment must be installed in the rear yard or on the side yard. If it is placed on a side yard and faces the street, it must be screened. Further, on a corner Lot the air-conditioning equipment may not be installed on a side yard that faces a street, regardless of whether the air-conditioning equipment is screened.
- 5.31.4 No Lot or improvement thereon shall be used for commercial or manufacturing purposes of any kind other than a small home office. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subsection shall prohibit a Builder's use of a residence as a sales office until such Builder's last residence on the Property is sold. Nothing in this subsection shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as a small home office, tutoring or giving lessons such as art, music or swimming so long as such activities do not materially increase the number of cars parked on the street or interfere with the other Owners reasonable use and enjoyment of their Lots and residences.
- 5.31.5 No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and six feet (6') above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street right-of-way line with the edge of a private driveway pavement. No tree shall be permitted to remain within such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- 5.31.6 No garage, garage house or structure of a temporary character, such as a trailer, tent, shack, barn or other out-building shall be occupied by any Owner, tenant or other person prior to the erection of a residence or used on the Property at any time as a dwelling house; provided, however, that any Builder may maintain and occupy model homes, sales offices and construction trailers during the construction period and sales period.
- 5.31.7 No signs, billboards, posters or advertising devices of any character shall be erected, permitted or maintained on any Lot or dwelling, except, subject to the rights of the ACC and Declarant to require removal of any distasteful, unsightly, weathered or abandoned signs, one sign of not more than six (6) square feet in surface area advertising the particular Lot or residence on which the sign is situated for sale or lease. The right is reserved by Declarant to construct and maintain and to permit builders or others to construct and maintain such signs, billboards or advertising devices as are customary in connection with the general sale of residential property. No sign of any kind or character,

including (a) any signs in the nature of a "protest" or complaint against Declarant or Builders, (b) any signs that describe, malign or refer to the reputation, character of building practices of Declarant or Builders, or (c) discourage or otherwise impact or attempt to impact anyone's decision to acquire a Lot or residence in the Subdivision shall be displayed to the public view on any Lot. The failure to comply with this restriction will also subject any Owner to a fine of \$100.00 per day (to be collected by Declarant) for each day that such Owner fails to comply with this restriction. The non-payment of such fine can result in a lien against said Lot, which lien may be foreclosed on in accordance with the terms set forth in this Declaration in order to collect such fine by the Declarant or any Owner in the Subdivision.

- 5.31.8 The drying of clothes in full public view is prohibited. The Owners and occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard is visible to full public view shall construct a fence or other suitable enclosure to screen from public view the equipment and other items which are incident to normal residences, such as clothes drying equipment, yard equipment, wood piles, storage piles and the like.
- 5.31.9 No Owner shall perform, fail to perform or permit anything to be done or not done on his Lot which would violate any laws, statutes, ordinances or regulations of any kind or character.
- 5.31.10 No oil drilling, oil development operation, oil refining, quarrying, water well drilling or mining operations of any kind shall be permitted in or on the Property (other than by Declarant or entities with which Declarant has contracted), nor shall oil wells, water wells, tanks (including propane tanks), tunnels, mineral excavations or shafts be permitted upon or in any part of the Property (other than by Declarant or entities with which Declarant has contracted). No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Property by anyone other than Declarant or entities with which Declarant has contracted.
- 5.31.11 No Lot or Common Area may be used in any way that (1) may reasonably be considered a public nuisance and/or a disturbance of the peace; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of Residents of other Lots; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The Board has the sole authority to determine what constitutes an annoyance.

ARTICLE 6

ASSOCIATION AND MEMBERSHIP RIGHTS

- 6.1 **THE BOARD.** Unless the Governing Documents expressly reserve a right, action or decision to the Owners, Declarant or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Governing Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors".
- 6.2 **THE ASSOCIATION.** The duties and powers of the Association are those set forth in the Governing Documents, together with the general and implied powers of a property owners association and a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper or desirable in operating for the peace, health, comfort and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Governing Documents. The

Association comes into existence on the earlier of (1) issuance of its corporate charter or (2) the initial levy of assessments against the Lots and Owners. The Association will continue to exist at least as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

- 6.3 **GOVERNANCE.** The Association will be governed by a board of elected¹ Directors. Unless the Association's Bylaws or Certificate of Formation provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the Bylaws, State and Federal laws and this Declaration of Covenants, Conditions and Restrictions. Unless the Governing Documents provide otherwise, any action requiring approval of the members may be approved in writing by Owners of at least a majority of all Lots, or at a meeting by Owners held in accordance with the Bylaws of at least a majority of the Lots that are represented at the meeting.
- 6.4 **MEMBERSHIP.** Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Lot. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a lot is owned by more than one person or entity, each co-owner is a member of the Association and may exercise the membership rights appurtenant to the Lot. A Member who sells his Lot under a contract for deed may delegate his membership rights to the contact purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all assessments attributable to his Lot until fee title to the Lot is transferred.
- 6.5 **CLASSES OF MEMBERSHIP AND VOTING.** One vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. Each vote is uniform and equal to the vote appurtenant to every other Lot, except during the Development Period as permitted in Exhibit "B". Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association's Bylaws.

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

- 6.5.1 **Class A.** Class A Members shall be all Members with the exception of Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership; provided, however, that in the event that more than one (1) person holds such interest or interests in any Lot, even though all such persons shall be Members, there shall be only one (1) vote for such Lot, which shall be exercised as they, among themselves, determine (but in no event shall more than one (1) vote be cast with respect to any such Lot).
- 6.5.2 **Class B.** The Class B Member shall be the Declarant. Until such time as the Declarant has sold all of the Lots in the Property, the Class B Member shall have the sole right to elect the Board of Directors of the Association and appoint the members of the ACC. Control of the Association shall only be vested in the Owners after completion of transfer to Class A Members of title to all of the Lots in the Property. The Declarant shall have ten (10) votes for each Lot it owns.
- 6.6 **VOTING BY CO-OWNERS.** The one (1) vote appurtenant to a Lot is not divisible. If only one of the multiple co-owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to the Lot. If more than one of the co-owners is present, the Lot's one vote may

¹ Election by the members is the ultimate goal of the Declarant. Notwithstanding, during the Development Period and/or Declarant Control Period, the Board of Directors may be appointed/elected as set forth in the provisions of this Declaration, which cover and stipulate the rights of the Declarant during the respective time periods.

be cast with the co-owners' unanimous agreement. Co-owners are in unanimous agreement if one of the co-owners casts the vote by ballot or proxy by the other co-owners. If the person presiding over the meeting or balloting receives evidence that the co-owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

- 6.7 **BOOKS RECORDS.** The Association will maintain copies of the Governing Documents and the Association's books, records and financial statements. Books and records of the Association will be made available for inspection and copying if and as required by the Texas Business Organizations Code.
- 6.8 **INDEMNIFICATION.** THE ASSOCIATION INDEMNIFIES EVERY OFFICER, DIRECTOR AND COMMITTEE MEMBER (FOR PURPOSES OF THE SECTION, "LEADERS") AGAINST EXPENSES, INCLUDING ATTORNEY'S FEES, REASONABLY INCURRED BY OR IMPOSED ON THE LEADER IN CONNECTION WITH AN ACTION, SUIT OR PROCEEDING TO WHICH THE LEADER IS A PARTY BY REASON OF BEING OR HAVING BEEN A LEADER. A LEADER IS NOT LIABLE FOR A MISTAKE OF JUDGMENT, NEGLIGENT OR OTHERWISE. THIS RIGHT TO INDEMNIFICATION DOES NOT EXCLUDE ANY OTHER RIGHTS TO WHICH PRESENT OR FORMER LEADERS MAY BE ENTITLED. THE ASSOCIATION SHALL MAINTAIN GENERAL LIABILITY AND DIRECTORS' AND OFFICERS' LIABILITY INSURANCE TO FUND THIS OBLIGATION.
- 6.9 **OBLIGATIONS OF OWNERS.** Without limiting the obligations of Owners under the Governing Documents, each Owner has the following obligations:
- 6.9.1. **Information.** Within thirty (30) days after acquiring an interest in a Lot, within thirty (30) days after the Owner has notice of a change in any information required by this subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (1) a copy of the recorded deed by which Owner has title to the Lot; (2) the Owner's address, telephone number and driver's license number, if any; (3) any mortgagee's name, address and loan number; (4) the name and telephone number of any Resident other than the Owner; and (5) the name, address and telephone number of Owner's managing agent, if any.
- 6.9.2. **Pay Assessments.** Each Owner will pay assessments properly levied by the Association against the Owner of his lot, and will pay regular assessments without demand by the Association.
- 6.9.3. **Comply.** Each Owner will comply with the Governing Documents as amended or restated from time to time.
- 6.9.4. **Reimburse.** Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a Resident of the Owner's Lot, or the Owner or Resident's family, guest, employees, contractors, agents or invitees.
- 6.9.5. **Liability.** Each Owner is liable to the Association for violations of the Governing Documents by the Owner, a Resident of the Owner's Lot or the Owner or Resident's family, guests, employees, contractors, agents or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.
- 6.10 **TRANSFER-RELATED FEES.** A number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of the Governing Documents, compliance inspections, ownership record changes and priority processing, provided the fees are customary in amount, kind and number for

the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against transfers unless a party to the transfer requests the corresponding documentation: (1) tax lien or the Association's assessment lien; (2) transfer to, from or by the Association; and (3) voluntary transfer by an owner to one or more co-owners or to the Owner's spouse, child or parent. Transfer related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer related fees charged by or paid to a managing agent are not subject to the Association's assessment lien, by the Association.

ARTICLE 7 **COVENANT FOR ASSESSMENTS**

- 7.1 **PURPOSES OF ASSESSMENTS.** The Association will use assessments for the general purposes of preserving and enhancing the Property and for the common benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of assessments is final.
- 7.2 **PERSONAL OBLIGATION.** An Owner is obligated to pay assessments levied by the Board against the Owner or his Lot. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be in full regardless of whether an Owner has a dispute with the Board, ACC or with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owners' obligation is not subject to offset by the Owner nor is it contingent on the Association's performance of the Association's duties. Payment of assessment is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.
- 7.3 **CONTROL FOR ASSESSMENT INCREASES.** For the 2016 calendar year, the maximum annual regular assessment shall be Seven Hundred Ninety-Five and 00/100 Dollars (\$795.00) per Lot. For the 2017 calendar year, the Board may increase the regular assessment to meet the anticipated needs of the appropriate budget, but the regular assessment may not be increased for calendar year 2017 by more than \$100.00 per Lot unless such increase is approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, where a quorum exists. For calendar years 2018 and thereafter, the Board may increase the regular assessment to meet the anticipated needs of the appropriate budget without any cap on the increase.
- 7.4 **TYPE OF ASSESSMENTS.** There are three (3) types of assessments: Regular, Special and Individual.
- 7.4.1. **Regular Assessments.** Regular assessments are based on the annual budget. Each Lot is liable for its equal share of the annual budget. If the Board does not approve an annual budget or fails to determine new regular assessments for any year, or delays in doing so, Owners will continue to pay the regular assessments as last determined. Regular assessments are used for common expenses related to the reoccurring, periodic and anticipated responsibilities of the Association, including but not limited to:
- a. Maintenance, repair and replacement, as necessary of the Common Area.
 - b. Utilities billed to the Association.
 - c. Services billed to the Association and serving all Lots.
 - d. Taxes on property owned by the Association and the Association's income taxes.

- e. Management, legal, accounting, auditing and professional fees for the Association.
- f. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses and educational opportunities of benefit to the Association.
- g. Premiums and deductibles on insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including fidelity bonds and directors' and officers' liability insurance.
- h. Contributions to the reserve funds.
- i. Any other expense which the Association is required by law or the Governing Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Governing Documents.

7.4.2. Special Assessments. In addition to regular assessments, and subject to the Owners' control for assessment increases, the Board may levy one or more special assessments against all Lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special assessments do not require the approval of the Owners, except that special assessments for the purposes provided hereafter must be approved by Owners of at least a majority vote of those members of the Association present at a meeting, in person or by proxy, at which a quorum exists. At least fifteen (15) days prior to any meeting of the Association called to consider any Special Assessment, the Board shall notify each Owner thereof by written notice specifying the total amount of the Special Assessment required, the amount thereof imposed on each Lot (which shall be uniform), the purpose for such Special Assessment and the time and method of payment thereof. Special Assessments for the following purposes shall require approval under the terms set forth in this provision:

- a. Acquisition of real property, other than the purchase of a lot at the sale foreclosing the Association's lien against the Lot;
- b. Construction of additional improvements within the Property;
- c. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs or replacement.

7.4.3 Individual Assessments. In addition to regular and special assessments, the Board may levy an individual assessment against a Lot and an Owner. Individual assessments may include, but are not limited to: interest, late charges and collection costs on delinquent assessments; reimbursements for costs incurred in bringing an Owner or his Lot into compliance with the Governing Documents; fines for violations of the Governing Documents, insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot, according to benefit received.

7.5 BASIS AND RATE OF ASSESSMENTS. The share of liability for common expenses allocated to each Lot is uniform for all Lots, regardless of a Lot's location or the value and size of the Lot or dwelling, but subject to lower rates of assessment for vacant Lots.

7.5.1 Improved Lot. A Lot that has been improved with a dwelling for which the Town has issued the initial certificate of occupancy will at all times thereafter be assessed at the full rate.

- 7.5.2 Lots Owned by Declarant. Notwithstanding the preceding subsection, Declarant shall not be liable for Assessments for any Lots that it owns. Declarant may, but shall have no obligation to, subsidize the Association from time to time in the form of a loan. Declarant is subject to the assessment exemption in Exhibit "B".
- 7.6 ANNUAL BUDGET. The Board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables.
- 7.7 DUE DATE. The Board may levy regular assessments on any periodic basis (annually, semi-annually, quarterly or monthly). Regular assessments are due on the first day of the period for which levied. Special and individual assessments are due on the date stated in the notice of assessment or, if no date is stated, within ten (10) days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date. Builders will pay six (6) months of dues in advance at Lot closing and thereafter as an owner.
- 7.8 ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of Owners of at least a majority of Lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.
- 7.9 ASSESSMENT LIEN. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his Lot.
- 7.9.1. Superiority of Assessment Liens. The assessment lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration, (3) subject to Section 7.9.2 below, a recorded deed of trust lien securing a loan for construction of the original dwelling, and (4) first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due.
- 7.9.2. Effect of Foreclosure, Other Conveyances. Foreclosing of a superior lien does not extinguish the Association's claim against the Lot for unpaid assessments (i.e., the party purchasing the Lot at the foreclosure sale or accepting title to the Lot by deed in lieu of foreclosure must pay all unpaid assessments which became due before such conveyance). The purchaser at the foreclosure sale or the party accepting title by deed in lieu of foreclosure is liable for assessments coming due from and after the date of the conveyance. In all other conveyances of a Lot, both the selling Owner and the new Owner are jointly liable for any unpaid assessments.
- 7.9.3. Perfection of Lien. The Association's lien for assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the court's real property records.
- 7.9.4. Power of Sale. By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of nonjudicial sale in connection with the Association's

assessment lien. The Board may appoint an attorney to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

7.9.5. Foreclosure of Lien. The assessment lien may be enforced by nonjudicial foreclosure. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey same.

7.10 LIMITATIONS OF INTEREST. The Association and its officers, directors, managers and attorneys intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Governing Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect as interest a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the Owner if those assessments are paid in full.

7.11 ENFORCEMENT AND FINING POLICY. In addition to the Assessment lien set forth in Section 7.9 above, attached hereto as Exhibit "E" is an Enforcement and Fining Policy (the "Policy") which shall govern the Association's rights to enforce the restrictions set forth herein and any rules adopted by the Board. The terms and provisions of the Policy shall take force immediately.

ARTICLE 8

EFFECT OF NONPAYMENT OF ASSESSMENTS AND VIOLATION OF THE DOCUMENTS

8.1 COLLECTING DELINQUENT ASSESSMENTS. An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association, acting through its Board, is responsible for taking action to collect delinquent assessments. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure to inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies, which the Association has.

8.1.1 Interest. Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of 18 percent or the maximum permitted by law. If the Board fails to establish a rate, the rate is 12 percent per annum.

8.1.2. Late Fees. Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

8.1.3. Costs of Collection. The Owner of a Lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorney's fees and processing fees paid by the Association for the collection thereof.

8.1.4. Money Judgment. The Association may file suit seeing a money judgment against an Owner delinquent in the payment of assessments without foreclosing or waiving the Association's lien for assessments.

- 8.1.5. Foreclosure of Assessment Lien. As provided by this Declaration, the Association may foreclosure its lien against the lot by judicial or nonjudicial means.
- 8.1.6. Payments. The Association may refuse to accept partial payments, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association and that acceptance occurs when the Association posts the payments to the Lot's account.
- 8.2 ENFORCING THE DOCUMENTS. The remedies provided in this Section for breach of the Governing Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Governing Documents and by law, the Association has the following right to enforce the Governing Documents;
- 8.2.1. Nuisance. The result of every act or omission that violates any provision of the Governing Documents is a nuisance and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.
- 8.2.2 Fine. The Association may levy reasonable charges, as an individual assessment, against an Owner and his Lot if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents or contractors violate a provision of the Governing Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under Governing Documents.
- 8.2.3. Suspension. The Association may suspend the right of Owners and Residents to use Common Areas (with the exception of streets) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents or contractors violate the Governing Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Governing Documents.
- 8.2.4. Self-Help. The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force, as may reasonably be necessary, any erection, thing, animal, person, vehicle or condition that violates the Governing Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an individual assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating owner ten (10) days' notice of its intent to exercise self-help.
- 8.2.5. Suit. Failure to comply with the Governing Documents will be grounds for an action to recover damages or for the injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.
- 8.2.6. No Waiver. The Association and every owner has the right to enforce all restrictions, conditions, covenants, liens and charges now or hereafter imposed by Governing Documents. Failure by the Association or by any Owner to enforce a provision of the Governing Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any part of the Governing Documents at any future time.

8.2.7 No Liability. No officer, director or member of the Association is liable to any Owner for the failure to enforce any of the Governing Documents at any time.

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

8.3 NOTICE AND HEARING. Before levying a fine for violation of the Governing Documents (other than nonpayment of assessment), or before levying an individual assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard before the Board. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional procedures and requirements for notices and hearing.

ARTICLE 9
MAINTENANCE AND REPAIR BY THE ASSOCIATION

9.1 ASSOCIATION MAINTAINS. The Association shall have the right, but shall not be deemed obligated, to maintain, repair and/or replace as a common expense, the portions of the Property listed below, regardless of whether the portions are on Lots or Common Areas.

- (a) The Common Areas, including, without limitation,
- (b) Any real and personal property owned by the Association but which is not a Common Area, such as a Lot owned by the Association,
- (c) Any area, item easement or service, the maintenance of which is assigned to the Association by this Declaration or by the plat.

Notwithstanding the above, the Association shall be responsible for the maintenance of any screening wall and entryway features, open spaces and amenities of the Property, as a common expense. The Town shall have no obligation for such maintenance, and the Association shall indemnify and hold the Town harmless for any claims of payment for such maintenance.

9.2 OWNER RESPONSIBILITY. Each Owner has responsibility for the maintenance, repair and replacement of its Residence. For items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at the Owner's expense, which is an individual assessment against the Owner and his Lot. In case of an emergency, however, the Board's responsibility to give the Owner written notice shall be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owners' expense.

9.3 SPECIAL FENCING. Declarant and/or the Association shall have the right, but not the obligation, to erect and/or install fences, walls and/or screening landscaping within (a) that portion of any Lot situated along certain streets, as determined by the Association, or (b) on any portion of the Property not comprising any portion of a Lot or dedicated street. THE ASSOCIATION, AT

ITS EXPENSE, SHALL BE OBLIGATED AND REQUIRED TO MAINTAIN, REPAIR AND/OR REPLACE SUCH FENCES, WALLS AND/OR SCREENING LANDSCAPING WITHIN THAT PORTION OF ANY LOT SITUATED ALONG THE PERIMETER OF THE ADDITION ADJACENT TO A PUBLIC STREET, AS SHOWN ON A FINAL PLAT. IT SHALL BE THE OBLIGATION OF THE LOT OWNER TO MAINTAIN ANY SPECIAL FENCING INSTALLED BY DECLARANT THAT IS ADJACENT TO ANY PUBLIC PARK OR PRIVATE PROPERTY AND THE ASSOCIATION SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO MAINTAIN, REPAIR AND/OR REPLACE THE SPECIAL FENCING INSTALLED BY DECLARANT THAT IS ADJACENT TO ANY PRIVATE OR PUBLIC PARK OR PRIVATE PROPERTY.

- 9.4 SPECIAL LANDSCAPING. Declarant and/or the Association shall have the right to grade, plant and/or landscape and maintain, repair, replace and/or change such grading, planting and landscaping on any portion of the Property not comprising any portion of a Lot or a dedicated street or on any land dedicated to the Town or on any portion of a Lot over which an easement has been reserved for the benefit of the Association.
- 9.5 DECLARANT'S DISCRETION. Notwithstanding any provision herein to the contrary, the Declarant shall not be obligated to erect, install, maintain, repair or replace any fences, walls, sprinkler systems, grading, planting or landscaping on the Property.
- 9.6 LIMITATION ON RIGHTS, DUTIES. The provisions of this Section 9 regarding Declarant's rights and duties shall terminate and be of no further force and effect from and after that date which is the earlier of (i) twenty (20) years after the recording of this Declaration, or (ii) that date on which Declarant sells the last Lot in Subdivision to a third party. The rights and duties of the Association shall continue throughout the term hereof.

ARTICLE 10 INSURANCE

- 10.1 GENERAL PROVISIONS. The provisions of this Article, with which the Board will make every reasonable effort to comply, govern all insurance affecting the Property. The cost of insurance coverage and bonds maintained by the Association is an expense of the Association. Insurance policies and bonds maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each Owner irrevocably appoints the Association, acting through its Board, as its trustee to negotiate, receive, administer and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:
- 10.1.1. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least ten (10) days' prior written notice to the Board before the policy may be canceled, terminated, materially modified or allowed to expire by either the insurer or the insured.
- 10.1.2. Deductions. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an Owner or Resident or their invitees, the Owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission as an individual assessment, within the limits of the law of the State of Texas.
- 10.2 PROPERTY. To the extent it is reasonably available the Association will obtain blanket all-risk insurance for insurable Common Area improvements. If blanket all-risk insurance is not

reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any Lot owned by the Association.

- 10.3 **GENERAL LIABILITY.** The Association shall make every effort to maintain a commercial general liability insurance policy over Common Areas—expressly excluding the liability of each Owner and Resident within his lot—for bodily injury and property damage resulting from the operation, maintenance or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other owners.
- 10.4 **DIRECTORS AND OFFICERS LIABILITY.** To the extent it is reasonably available, the Association will maintain directors' and officers' liability insurance, errors and omissions insurance, indemnity bonds or other insurance the Board deems advisable to insure the Association's directors, officers, committee members and managers against liability for any act or omission in carrying out their duties in those capacities.
- 10.5 **OTHER COVERAGES.** The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

ARTICLE 11 **AMENDMENTS**

- 11.1 **CONSENTS REQUIRED.** As permitted by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by the Board alone. Otherwise, Owners of at least a majority of the Lots must approve amendments to this Declaration.
- 11.2 **METHOD OF AMENDMENT.** Except as provided in Article 12 below, at any time the Owners may amend this Declaration by executing an instrument containing such amendment(s) and recording same in the appropriate Property Records of the County, provided, however, that for the period which the Declarant owns at least one Lot, no such amendment shall be effective without the joinder and consent of Declarant.
- 11.3 **CONDEMNATION.** In any proceeding, negotiation, settlement or agreement concerning condemnation of the Common Area, the Association will be the exclusive representative of the Owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the Common Area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion or waiver of the repair and replacement will be deposited in the Association's reserve funds.

ARTICLE 12 **DECLARANT RIGHTS**

- 12.1 **SPECIFIC DECLARANT RIGHTS.** Notwithstanding anything herein to the contrary (in the event of any provision herein is in contraction to this Article 12, in whole or in part, this Article 12 shall prevail), so long as Declarant, its successors or assigns, owns at least one (1) Lot (the "Declarant Control Period"), Declarant shall have the sole right, but not the obligation, in its sole discretion, at any time, effective as of the date hereof, to control, perform and/or conduct the following:
- 12.1.1. Appoint (including itself) and/or substitute at any time the Board of Directors.
- 12.1.2. Terminate any or all of the Board of Directors.

- 12.1.4. Enforce the provisions in this Declaration.
- 12.1.5. Review, determine and enforce the architectural control of the Lots, including the right to appoint the panel of the ACC.
- 12.1.6. Appoint, enlist, hire and/or retain a property management company in behalf of the Association as well as the right to terminate the services of any such management company at the Declarant's sole discretion.
- 12.1.7. Assign its rights and obligations under this Declaration to any entity at any time, in whole or in part.
- 12.1.8. Have the authority to approve or disapprove any and all Phases and/or street right-of-way access, either public or private, to the Property from adjacent land.
- 12.2. DECLARANT'S SOLE DISCRETION. Declarant's rights set forth above are absolute in its sole discretion and do not require the approval, consent or joinder of (i) any Owner, (ii) the Association, (iii) the Board of Directors, or (iv) any committees or other parties which may be established with respect hereto. At such time as the Declarant no longer owns a Lot, all of such rights of enforcement shall revert to the Board of Directors of the Association.
- 12.3. RIGHTS TO ANNEX. Declarant may annex additional property to become a portion of the Property and thereafter be subject to the terms, provisions and conditions of these Covenants. Declarant may exercise such right by recording a Supplement to this Declaration in the Records of Denton County, Texas, subjecting such additional property to the terms and conditions hereof. No further action or approval shall be required or necessary for the Declarant to annex additional properties into the Property for the purpose of subjecting it to this Declaration. Any document subjecting additional property to the Declaration may also impose different or additional restrictions not found in this Declaration upon such additional property; provided, however, that in no event shall such Supplement to the Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplement to the Declaration as it or they may apply to the original Property or to any previously added additional land, nor shall same create an inequitable system for imposing Assessments on the Property or any part thereof. Upon the annexation and platting of any additional property as herein provided, each Lot described therein shall become a "Lot" for all purposes hereunder. Declarant reserves an exclusive right to control any and all future phases to Shadow Creek Estates and such right shall survive the Declarant control period as set forth herein.
- 12.4. NO DUTY TO ANNEX. Nothing herein contained shall establish any duty or obligation on the part of Declarant to annex any property to this Declaration and no owner of the property excluded from this Declaration shall have any right to have such property annexed thereto.
- 12.5. EFFECT OF ANNEXATION ON CLASS B MEMBERSHIP. In determining the number of Lots owned by Declarant for the purpose of Class B membership status the total number of Lots covered by this Declaration, including all Lots annexed thereto shall be considered. If Class B membership has previously lapsed but annexation of additional property restores the ratio of Lots owned by Declarant to the number required by Class B membership, such Class B membership shall be reinstated until it expires pursuant to the terms set forth in Section 6 and as may be found herein.
- 12.6. SPECIFIC DECLARATION RIGHTS TO AMEND DECLARATION. Declarant without joinder of the Board, the Association or the other Owners may amend this Declaration to correct any errors or to cause the Declaration to be in compliance with any Town or other governmental

requirement (including any requirements imposed by the Federal Housing Administration, the Veterans Administration, the Department of Housing and Urban Affairs, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association).

- 12.7 EASEMENT/ACCESS RIGHT. Declarant reserves a general easement over all streets, roads, rights-of-way, and utility, maintenance, landscaping, wall and other easements in the Property and over the balance of the Common Area for access for purpose of finishing development of the Property as a subdivision and as otherwise reasonably necessary to affect Declarant's rights hereunder. Such easements and rights shall expire at such time that Declarant no longer owns a Lot.
- 12.8 ASSIGNMENT OF DECLARANT'S RIGHTS. Declarant may assign its rights to a successor Declarant hereunder by execution of a written document, recorded in Records of Denton County, Texas, specifically stating that Declarant has assigned its rights as such to a designated assignee and declaring such assignee to be the new "Declarant" hereunder.
- 12.9 DECLARANT'S RIGHT TO INSTALL IMPROVEMENTS IN SETBACK AND OTHER AREAS. Declarant, in connection with development of the Property and construction of dwellings thereon, reserves the right but shall have no obligation to install or construct walls, fences, irrigation systems and other improvements in the setback areas (being the areas on, along and/or between the boundary line of a Lot and the building or setback lines applicable to such Lot). If Declarant exercises such right in a setback area, then such wall, fence, irrigation system or other improvement shall be the property of the Owner(s) of the Lot(s) upon which or adjacent to these are located, and such Owner(s) shall maintain and repair any such improvement unless Declarant or the Association, by and through the Board, assumes such maintenance and repair obligations. If Declarant exercises such right in the above-described non-setback areas, then such wall, fence, irrigation system or other improvement shall be the property of the Association. So long as it owns any Lot, Declarant shall have the right, but not the obligation, to maintain and repair any such non-setback area improvements; otherwise, the Association shall assume the maintenance and repair or it may abandon such improvements at its discretion. If the Town requires the maintenance, repair or removal of any such non-setback area improvements, the Association shall assume such responsibility at its expense. If the Association so abandons such non-setback area improvements or is properly dissolved, then the Owner(s) of the Lot(s) on or adjacent to which such improvements are located shall assume maintenance and repair at their expense.
- 12.10 REPLATTING OR MODIFICATION OF PLAT. From time to time, Declarant reserves the right to replat the Property or to amend or modify the Plat in order to assure a harmonious and orderly development of the Property as herein provided. Declarant may exercise such rights so long as it owns at least one Lot, in which case no joinder of any other Owner shall be required to give effect to such rights. By the acquisition of a Lot, each Owner acknowledges that he has read the Governing Documents and is advised of Declarant's right to replat the Property or to amend or modify the Plat, as Declarant deems necessary, and in Declarant's sole discretion. Moreover, each Owner further acknowledges, accepts and agrees that this right of Declarant is a benefit to each Owner and the Association. Each Owner, by acquisition of a Lot, consents to Declarant's execution of any replat on behalf of the Owner and the Association. However, any such replatting or amendment of the Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for compliance with any applicable governmental regulation. Declarant's rights under this Section shall expire at such time as Declarant no longer owns a Lot.
- 12.11 LIMITATION OF DECLARANT LIABILITY. The Declarant shall not be responsible or liable for any deficit in the Association's funds. Declarant may, but is under no obligation to, subsidize any liabilities incurred by the Association and the Declarant may, but is not obligated to, lend

funds to the Association to enable it to defray its expenses, provided the terms of such loans are on reasonable market conditions at the time.

- 12.12 **TERMINATION OF DECLARANT'S RESPONSIBILITIES.** In consideration of Declarant's deficit funding of the Association, if any, upon the occurrence of any of the following events: (i) conversion of Declarant's Class B membership status to Class A membership status; (ii) completion of any facilities in the Common Area by Declarant; or (iii) assignment of Declarant's rights hereunder pursuant to Section 12.8, then and in such event Declarant shall be fully released, relieved and forever discharged from any further duty or obligation to the Association or any of its members as Declarant by reason of the terms and conditions of this Declaration including any amendments thereof or supplements thereto, save and except the duties and obligations, if any, of Declarant as a Class A member by reason of Declarant's continued ownership of one or more Lots, but not otherwise. Further, and without regard to whether or not Declarant has been released from obligations and duties to the Association, so long as Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor its Board, no any member of the Association, shall take any action that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the sale of Lots. In the event there is a breach of this Section, it is acknowledged that any monetary award, which may be available would be an insufficient remedy and, therefore, in addition to all other remedies, the Declarant shall be entitled to injunctive relief restraining the Association, its Board or any member of the Association, from further breach of this Section.

ARTICLE 13 **GENERAL PROVISIONS**

- 13.1 **COMPLIANCE.** The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Governing Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.
- 13.2 **NOTICE.** All demands or other notices required to be sent to an Owner or Resident by the terms of the Declaration may be sent by ordinary or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing or elected by the Owners electronically. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owner's Lot, and the Owner is deemed to have been given notice, whether or not he actually receives it.
- 13.3 **LIBERAL CONSTRUCTION.** The terms and provisions of each Governing Document are to be liberally construed to give effect to the purposes and intent of the Governing Documents. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved in favor of the operation of the Association and its enforcement of the Governing Documents, regardless of which party seeks enforcement.
- 13.4 **SEVERABILITY.** Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.
- 13.5 **CAPTIONS.** In all Governing Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

- 13.6 **EXHIBITS**. The exhibits listed below are attached to this Declaration and incorporated herein by reference. Because **Exhibit "B"** of this Declaration is destined to become obsolete, beginning 20 years after the date this Declaration is first recorded, this Declaration may be restated, re-recorded or published without **Exhibit "B"**, provided the other appendixes are not relettered. The automatic expiration and subsequent deletion of **Exhibit "B"** does not constitute an amendment of this Declaration. The exhibits to this Declaration include:
- A. Legal Description of the Property;
 - B. Declarant Representations and Reservations;
 - C. Acknowledgment by Acquisition;
 - D. Design Guidelines; and
 - E. Enforcement and Fining Policy.
- 13.7 **INTERPRETATION**. Whenever used in the Governing Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.
- 13.8 **DURATION**. Unless terminated or amended by the Owners and/or the Declarant as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

(End of Provisions)

Executed this 18 day of Dec., 2015.

Address:
909 Lake Carolyn Parkway
Suite 150
Irving, Texas 75039

DECLARANT:
RCM Highlands, LP,
a Texas Limited Partnership

By: RCM Highlands GenPar, LLC, a Texas limited liability company, its General Partner

By: Kiwi Management, LLC, a Texas limited liability company, Manager

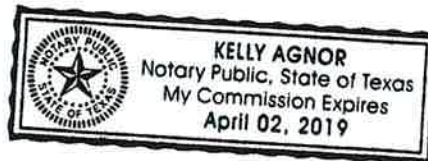
By: [Signature]
Name: Timothy Coltart
Its: Member

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This Declaration of Covenants, Conditions and Restrictions for Highlands of Northlake Home Owner Association was acknowledged before me this 18 day of Dec, 2015, by Timothy Coltart, Member of Kiwi Management, LLC, a Texas limited liability company, the Manager of RCM Highlands GenPar, LLC, a Texas limited liability company, the General Partner of RCM Highlands, LP, a Texas Limited Partnership on behalf of such limited liability companies.

Kelly Agnor
Notary Public, State of Texas
Printed Name: Kelly Agnor

My Commission Expires:
April 02, 2019



CONSENT AND SUBORDINATION OF LIENHOLDER

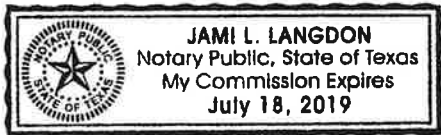
Prior to the date of this Declaration, Declarant granted a deed of trust lien on the Property to First United Bank and Trust (“**Development Lender**”) pursuant to that certain Deed of Trust and Security Agreement dated August 11, 2014, among Declarant, as grantor, Development Lender, as beneficiary, and Greg Massey, as trustee, recorded as Instrument No. 2014-80572 of the Real Property Records of Denton County, Texas (“**Development Deed of Trust**”). Development Lender hereby acknowledges, consents to, and joins in this Declaration and further covenants that all of its respective right, title and interest in the Property is and shall be subject and subordinate to this Declaration and all provisions hereof. However, nothing in this consent is intended to subordinate the Development Deed of Trust to any lien arising under this Declaration or to any other mortgage, deed of trust or other security document.

DEVELOPMENT LENDER: First United Bank and Trust

By: Brent Thornton, SVP
Name: BRENT THORNTON
Title: SR. V.P.

STATE OF TEXAS §
 §
COUNTY OF Denton §

This instrument was acknowledged before me on this 21 day of December, 2015, by Brent Thornton, SVP
[Title] of First United Bank and Trust.



Jami Langdon
NOTARY PUBLIC STATE OF TEXAS
Printed Name: Jami Langdon
My commission expires: July 18, 2019

EXHIBIT A

Legal Description of the Property

Being a 363.905 acre tract of land out of the A. McDonald Survey, Abstract No. 785, Denton County, Texas and also being out of a 434 acre tract of land owned by Curtis Tally as recorded in Volume 1894, Page 254, Deed Records, Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a found railroad spike located in Mulkey Road, said point also being the centerline of a 50 foot wide easement owned by Mobil Pipe Line Company, as recorded in Volume 2239, Page 909, Deed Records, Denton County, Texas;

THENCE North 01 degree 36 minutes 10 seconds West, leaving said Mulkey Rd. and following the centerline of said Mobil easement, passing at 858.23 feet, a found 1/2 inch iron rod, continuing in all a distance of 2040.28 feet to a found 1/2 inch iron rod in a fence on the South line of Farm to Market Road 407, said point also being in the North line of said 434 acre tract;

THENCE North 89 degrees 53 minutes 45 seconds East, following along the South line of F.M. 407, and the North line of said 434 acre tract, for a distance of 757.81 feet to a set 1/2 inch iron rod;

THENCE South 89 degrees 52 minutes 59 seconds East, continuing along said South line of F.M. 407 and said North line of the 434 acre tract, for a distance of 2,255.46 feet to a found fence corner;

THENCE South 01 degree 02 minutes 11 seconds East, along a fence line and the East line of said 434 acre tract, for a distance of 5898.19 feet to a found 1/2 inch iron rod, said point being located in said Mulkey Rd. and also being the Southeast corner of said 434 acre tract;

THENCE South 89 degrees 25 minutes 07 seconds West, along said Mulkey Rd. and the South line of said 434 acre tract, for a distance of 2,540.75 feet to a set 1/2 inch iron rod;

THENCE North 00 degrees 09 minutes 35 seconds West, continuing along said Mulkey Rd. and the most Southerly West line of said 434 acre tract, for a distance of 3,767.06 feet to a set 1/2 inch iron rod;

THENCE North 22 degrees 54 minutes 28 seconds West, along said Mulkey Rd. and the said West line of said 434 acre tract, 84.75 feet to a set 1/2 inch iron rod;

THENCE North 39 degrees 48 minutes 56 seconds West, continuing along said lines, for a distance of 72.51 feet to a set 1/2 inch iron rod;

THENCE South 88 degrees 08 minutes 16 seconds West, continuing along said Mulkey Rd. and the most Northerly South line of said 434 acre tract, for a distance of 432.57 feet to the POINT OF BEGINNING and containing 15,851,704.139 square feet or 363.905 acres of land, more or less.

(End of Exhibit A)

EXHIBIT B
DECLARANT REPRESENTATIONS AND RESERVATIONS

B.1 GENERAL PROVISIONS.

- B.1.1. **Introduction.** Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to the future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling certain of the Declarant-related provisions in this Exhibit.
- B.1.2. **General Reservation and Construction.** Notwithstanding other provisions of the Governing Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other owner, or the Association, prevent or interfere with the rights contained in this Exhibit, which Declarant hereby reserves exclusively until itself and its successors and assigns. In case of conflict between this Appendix and any other Governing Document, this Exhibit controls. This Exhibit may not be amended without the prior written consent of Declarant. The terms and provisions of this Exhibit must be construed liberally to give effect to Declarant's intent to protect Declarant's intent to protect Declarant's interests in the Property.
- B.1.3. **Purpose of Development and Declarant Control Periods.** This Exhibit gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly build out and sell out of the Property, which is ultimately for the benefit and protection of owners and mortgagees.

B.2 DECLARANT CONTROL PERIOD RESERVATION. Declarant reserves the following powers, rights and duties during the Declarant Control Period (as defined in Section 12.1 of the Declaration):

- B.2.1. **Officers and Directors.** During the Declarant Control Period, Declarant may appoint, remove and replace any officer or director of the Association, none of whom need be Members or Owners.
- B.2.2. **Declarant Assessments.** During the Declarant Control Period, Lots owned by Declarant are not subject to assessment.
- B.2.3. **Builder Assessments.** During the Declarant Control Period only, Declarant has the right but not the duty to reduce or waive the assessment obligation of a Builder, provided the agreement is in writing.
- B.2.4. **Expenses of Declarant.** Expenses related to the completion and marketing of the Property will be paid by Declarant or by Builders and are not expenses of the Association.
- B.2.5. **Budget Control.** During the Declarant Control Period, the rights of owners to veto regular assessment increases or special assessments are not effective and may not be exercised.
- B.2.6. **Organizational Meeting.** Within 90 days after the end of the Declarant Control Period or sooner at the Declarant's option, Declarant will call an organizational meeting of the Members of the Association for the purpose of electing, by vote of the Owners, Directors to the Board. Written notice of the organizational meeting must be given to an Owner of each Lot at least 10 days before the meeting. For the organizational meeting, Owners of 10 percent of the Lots constitute a quorum.
- B.2.7. **Common Areas.** At or prior to termination of the Declarant Control Period, Declarant will convey title to the Common Areas to the Association by deed—with or without warranty. At the time of conveyance, the Common Areas will be free of encumbrance except for the property taxes

accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners.

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

B.3.1. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by the Town, Declarant may (1) change the sizes, dimensions and configurations of Lots and streets; (2) change the minimum dwelling size; (3) change the building setback requirements; and (4) eliminate or modify any other feature of the Property.

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

B.3.3. ACC. During the Development Period, Declarant has the absolute right to appoint the Architectural Control Committee, consisting of any number of persons who serve at the pleasure of Declarant, and who may be removed and replaced by Declarant. Notwithstanding the foregoing, during the Development Period—after termination of Declarant Control, or earlier if Declarant permits—the Board may appoint or serve as a "modifications committee" to respond exclusively to modifications. The modifications committee may not involve itself with the approval of new homes or vacant lots.

B.3.4. Amendment. During the Development Period, Declarant may amend this Declaration and the other Governing Documents, without the consent of other Owners or any mortgagee, for the following limited purposes:

- a. To annex real property to the Property.
- b. To withdraw real property from the Property.
- c. To create Lots, easements and Common Areas within the Property.
- d. To subdivide, combine or reconfigure Lots.
- e. To convert Lots into Common Areas.
- f. To modify the construction specifications of this Declaration.
- g. To merge the Association with another property owners association.
- h. To comply with requirements of an underwriting lender.
- i. To resolve conflicts, clarify ambiguities and to correct misstatements, errors or omissions in the Governing Documents.
- j. To enable any reputable title insurance company to issue title insurance coverage on the Lots.
- k. To enable an institutional or governmental lender to make or purchase mortgage loans on the Lots.
- l. To change the name or entity of Declarant.
- m. To change the name of the addition in which the Property is located.
- n. For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.

B.3.5. Completion. During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the Common Area and Lots owned or leased by Declarant whatever Declarant determines to be necessary and advisable in

connection with the construction, completion, management, maintenance, leasing and marketing of the Property.

- B.3.6. Easement to Inspect and Right to Correct. During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on any Lot may be warranted by a change of circumstance, imprecise sitting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.
- B.3.7. Promotion. During the Development Period, Declarant reserves for itself an easement and right to place and relocate signs, banners, flags, display lighting, and seasonal landscaping on the Property, and to maintain models and sales offices for purposes of promoting, identifying and marketing the Property and/or Declarant's houses, Lots, developments or other products located outside the Property. During the Development Period, Declarant also reserves (1) the right to permit Builders to place signs and promotional material on the Property and (2) the right to exempt Builders from the sign restriction in this Declaration.
- B.3.8. Access. During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing and marketing the Property, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the home-buying public through an existing or future gate that restricts vehicular access to the Property in connection with the active marketing of Lots and homes by Declarant or Builders, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.
- B.3.9. Utility Easements. During the Development Period, Declarant may grant permits, licenses and easements over, in, on, under and through the Property for utilities, roads and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any Lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, fiber optic, trash removal, electricity, gas, telephone, television and security.
- B.3.10. Transfer Fees. During the Development Period, Declarant shall not be required to pay transfer-related fees and/or resale certificate fees.
- B.3.11. Agents for Declarant. From time to time, Declarant may invite, request or employ one of its affiliates and/or a property/association management company, as its Agent, to share in the exercise of any, some or all of its easements and rights, without any formality other than the consent of Declarant. Notwithstanding such sharing, such agent will not become a successor Declarant unless such agent and Declarant join in an instrument that assigns and transfers Declarant's rights and duties under this Declaration, signed and acknowledged by both Declarant and such agent, and recorded in the county's real property records.
- B.4 WORKING CAPITAL FUND. The Association may (but is not required to) establish a working capital fund. Each and every Lot shall have a per Lot recurring contribution to this fund set at Nine Hundred Fifty and 00/100 Dollars (\$950.00), a recurring fee to be paid upon each and every closing on the sale or transfer of any such Lot to an Owner other than the Declarant. Each new purchaser shall be responsible for contribution to the fund. Contributions to the fund are not advance payments of regular assessments and

are not refundable. The working capital fund shall be used for building capital or making improvements for the benefit of the property of the Association and/or the members.²

- B.5 **SUCCESSOR DECLARANT.** Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the real property records of Denton County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this section and may designate further Successor Declarant(s).

(End of Exhibit B)

² This fund will not be used for improvements, which are the responsibility of the Declarant, Developer or Builders.

EXHIBIT C
ACKNOWLEDGMENT BY ACQUISITION

By its acquisition and ownership of a Lot in the Property, each Owner acknowledges that:

- (a) Declarant has not mass graded or benched for building pads on the property therefore individual lot grading is natural.
- (b) Due to the topography of its Lot and the Property, water will, at times, flow through and over portions of its Lot from adjacent and surrounding Lots in order to achieve positive drainage away from other Lots. No adverse action may be taken by said Owner(s) to the detriment of this positive drainage on its or adjacent Lots.
- (c) The property adjacent to the Subdivision is not owned or controlled by Declarant and each Owner has hereby been advised to consult with the applicable departments of the Town for any changes to and/or specific zoning information regarding its Lot, the Property and the zoning or proposed (re-)zoning of any adjacent property. It is also understood by each Owner that there are no oral, written or implied representations or warranties regarding zoning or development of the Property or adjoining properties.
- (d) Each Lot may have "back-to-front" or "front-to-back" drainage. There may be a swale or swales over various portions of each Lot due to this drainage situation. The depth and width of any swales will vary depending on the elevations of its and adjacent Lots. The front and the rear portions of each Lot will not be level and no adjustments to the depth or severity of any swales should be made due to cosmetic or aesthetic concerns. Any alterations made after closing to any swales by an Owner may impact the drainage as well as any foundation warranty that he may own.
- (e) The failure or excessive movement of any foundation of any dwelling in the Addition can result in the diminished value and overall desirability of the entire Addition. Each Owner agrees and understands that the maintenance of the moisture content of the soils on each Lot is necessary to preserve the structural integrity of each home in the Addition. Each Owner also acknowledges that the long term value and desirability of the Addition is contingent upon each Owner maintaining their dwelling so that no structural failure or excessive soil movement occurs within the Addition.

EACH OWNER IS HEREBY NOTIFIED THAT THE SOIL COMPOSITION IN TEXAS IN GENERAL AND THE PROPERTY IN PARTICULAR AND THE CONDITIONS OF THE LOTS MAY RESULT IN THE SWELLING AND/OR CONTRACTION OF THE SOIL IN AND AROUND THE LOT IF THE OWNER OF THE LOT DOES NOT EXERCISE THE PROPER CARE AND MAINTENANCE OF THE SOIL REQUIRED TO PREVENT SOIL MOVEMENT.

If the Owner fails to exercise the necessary precautions, damage, settlement, movement or upheaval to the foundation may occur. Owners are highly encouraged to install and maintain proper irrigation around their dwellings or take such other measures to ensure even, proportional and prudent watering around the foundation of the dwelling.

By each Owner's acceptance of a warranty deed to any Lot, each Owner, on behalf of Owner and Owner's representatives, successors and assigns, hereby acknowledge that the Declarant and all Builders in the Subdivision shall not be responsible or liable for any damage, settlement, movement or upheaval to the foundation or any other part of the residence constructed on said Lot and hereby releases and forever discharges, all Builders in the Subdivision and Declarant, and their respective shareholders, members, officers, directors, partners, employees, agents, representatives, affiliates, attorneys, successors and assigns, of and from any and all claim for the relief and/or causes of actions, liabilities, damages and claims whatsoever, known or unknown, direct or indirect, arising from or relating to the foundation and/or the residence constructed upon the Lot, including but not limited to any damage thereto caused by and/or related in any fashion to the soil condition upon which the same are constructed, the presence or groundwater and any other subsurface condition affecting the Lot and/or from the failure or improper or uneven watering of the Lot, inadequate grading or

drainage facilities to carry water away from the foundation or planting of improper vegetation near the foundation or any action which affects the drainage of any Lot.

- (f) Each Lot falls under the jurisdiction of the Association, which requires mandatory affiliation thereto, including the payment of an annual fee (which may be payable on a quarterly or other basis) per Section 7.3 of the Declaration. Each Owner will also incur a working capital contribution fee, a resale certificate fee and a transfer fee per Section 6.10 of the Declaration, which he understands should be further reviewed for more detailed information regarding Association dues, assessments and restrictions.
- (g) Each Owner understands and agrees that neither Declarant nor Builder has any responsibility as to the present condition or future maintenance of any trees on its Lot. Furthermore, it is understood by each Owner that neither Declarant nor Builder makes any assurances, implied or stated, in regard to the survival of any trees during the construction process of building and completing a Residence on his Lot. It is also acknowledged that neither Declarant nor Builder has any liability consideration on trees either during construction or after a Residence is purchased and occupied on the Lot. It is further understood that each Owner assumes all responsibility of the maintenance and the condition of any trees on his Lot.
- (h) Any modifications or additions to each Residence or any Structure on any Lot require prior submittal to and approval of plans and specifications by the ACC pursuant to the Declaration. It is also understood that failure to so comply may result in the imposition of fines against the Owner and/or the removal of such modifications or additions at Owner's expense.
- (i) There is no prescribed time for the construction or marketing by Builder or Declarant of a Residence on any Lot or the Lot itself. It is also understood that Builder and Declarant make no assurances regarding any established period of time during which Lots near the model homes or trailers of any Builder will remain vacant since the utility of such homes or trailers is of an indeterminate length of time.
- (j) Each Owner should direct any issues concerns or questions regarding the Common Area or the Association to the property manager hired by the Association, whose name can be obtained by contacting any Builder or Declarant.

(End of Exhibit C)

EXHIBIT D
DESIGN GUIDELINES

1.0 INTRODUCTION AND DESIGN PRINCIPLES

These design guidelines outline the overall intent of the neighborhood and put into place architectural standards and review processes to preserve the quality and character of The Highlands. All builders and homeowners are encouraged to read this document thoroughly.

The Highlands presents the opportunity to become a unique rural neighborhood, but to reach this distinction, homebuilders and homeowners must comply with The Highlands Design Guidelines (Design Guidelines) while at the same time utilize their creativity to produce floor plans and elevations that will enhance the neighborhood. This is the basic framework to set a rural neighborhood character. How The Highlands actually looks and feels once it is built out depends on the diligence of the builders and the homeowners.

The architecture of the home should include certain qualities. Among these are logic, strength, and beauty. "Logic" means making the home convenient, livable, and adaptable to the family, the site, and the community. "Strength" means using quality building materials and sound construction for durability and long life. "Beauty" comes from the simplicity of the design, careful attention to detail and proportions, and the quality of the design. Through these guidelines, the Architectural Control Committee (ACC) has communicated these concepts in both written and pictorial form (where necessary to illustrate a point).

1.1 Objectives/Purpose

The purpose of the Design Guidelines is to ensure that the development of The Highlands conforms to the design intent of the Concept Plan (Exhibit A) prepared by the developer, Realty Capital Management (the Developer). To that end, the primary objectives of these Design Guidelines are as follows:

1. To establish design criteria that will protect the vision, enhance the integrity, and preserve the value of all components of the community,
2. To create an efficient and orderly process for design review,
3. To encourage design that will achieve a harmonious relationship among neighboring homes on the same street, and
4. To preserve the integrity of the Concept Plan to the greatest possible extent both during construction phases and long after the last house is built.

These guidelines are supplemental to the Declaration of Covenants, Conditions, Restrictions, and Easements for The Highlands Homeowners Association, Inc. (Protective Covenants) and are to be used during architectural review of builder, developer, or homeowner plans. Non-compliance with these Design Guidelines is justification for disapproval of submitted plans. These guidelines also are for use as standards for future compliance to maintain the integrity of the community, as well as the preservation and enhancement of property values. These Design Guidelines may be amended from time to time and phase by phase as the Concept Plan develops.

The Design Guidelines contain the construction and development standards adopted by the ACC but do not necessarily represent all of the restrictions that may be imposed on a specific lot or parcel of land. Prior to commencing design of a project, the builder and homeowner should first refer to the Town of Northlake's (the Town's) zoning ordinances, the property deed, the Highlands development agreement, the recorded subdivision plat, the Protective Covenants, and all other pertinent information that may be provided by a title company. Approval by the ACC does not relieve the applicant from conformance with any state, county, or local codes, current engineering or environmental practices, or building codes. The ACC is further understood to assume no responsibility for structural integrity or for adequacy of code compliance or mechanical and electrical design by approval of the submitted forms.

2.0 HOME BUILDING CRITERIA

2.1 Square Footage

The Highlands needs a variety of home sizes in order to appeal to a variety of homebuyers. The minimum square footage of air-conditioned space for The Highlands will be 2,600 for single level homes and 3,000 for two story homes.

2.2 Building Setbacks

Front – Forty (40') feet to fifty-five (55') feet from front property line and within five (5) feet of the immediate neighbors front building line.

Side – Fifteen (15') feet to site property line.

2.3 Maximum Height

The maximum height for the homes built in The Highlands will be two and one-half stories or 35 feet.

2.4 Minimum Floorplan Width

The minimum floorplan width for homes will be 70 feet.

2.5 Appropriate Architecture

The appropriate architectural theme avoids trendy styles that can become monotonous to the streetscape and dated. The goal is to provide a variety of architectural styles that complement one another and create a neighborhood with enduring value and beauty. Covered entries and outdoor areas, including front porches, patios, decks, and balconies, are encouraged to provide gracious transitions to outdoor areas as well as shade for living areas. The Architectural Control Committee (ACC) is vested with full authority and discretion as to what constitutes appropriate architecture.

2.6 Inappropriate Architecture

A style trend that began out of the Dallas/Fort Worth and Houston areas in the mid-to-late 1980's is often referred to as the "Texas Arch," which is characterized by a towering entry with a two-story masonry archway, an extremely large window above the front

door, and an imposing entryway that protrudes from what is otherwise a flat elevation. The style is often characterized by a series of “trendy” windows with multiple arches and front elevations that have more glass than building. The trendy, overused look of the “Texas Arch” does not bode well with the timeless design philosophy of The Highlands. Disproportional monumental entryways that are out of scale with the structure and the architectural style of the neighborhood are prohibited. Another inappropriate style trend that began in the 1980’s is referred to as the “McMansion.” The term “McMansion” is generally used to denote new, or recent, multi-story houses with no clear architectural style, and a notably larger footprint than the existing houses in its neighborhood. They are typically mass-produced and lack distinguishing characteristics. The ACC is vested with full authority and discretion as to what constitutes the “Texas Arch” and “McMansion,” or any other inappropriate style, and which submitted plans would be placed in these categories.

2.7 Non-Repeat Clause

Floor plan	The same floor plan may not be duplicated on the neighboring lots or on the lot immediately across the street from the subject lot.
Elevation	The same elevation may not be duplicated on the two consecutive neighboring lots on either side of the subject lot or on the lots immediately across the street from such lots.
Exterior color selections	The same brick, stone, stucco, or exterior paint palette may not be duplicated on the neighboring lots or on the lot immediately across the street from the subject lot.
Elevation and exterior color selections	Nowhere within the platted block may the same elevation be repeated with the same exterior color selections.

2.8 Lot Grading

Lots will be graded by individual homebuilders as homes are constructed in order to save as many trees as possible and provide flexibility to the individual builders. The grading must conform to the as-built construction drawings produced by the engineer of record. Trees may be removed from the footprint of the main structure and the driveway without penalty. Any other trees removed from the lot will be mitigated according to the Town’s mitigation policy.

2.9 Garages

Materials

The garage doors should likewise be of high quality design and all garage doors shall be of stain grade cedar or simulated/synthetic wood grain. Designer garage doors with architectural stylings or stylings that match the house design are also allowed. No simple panel garage doors will be allowed.

Orientation and Setback

Garages facings the street are prohibited in The Highlands. Garage doors for lots on Southerland Crescent must be orientated to the south. A third garage will be allowed to face the street if set back a minimum distance of sixteen (16’) feet from the front building line of the home. Front elevation is defined as that portion of the living area of a house nearest to the front building line that parallels the street and is located at

grade. It is recommended that the garage elevation be designed in a manner to minimize the visual impression of garages.

2.10 Exterior Sheathing Materials

Homes shall be 100% masonry. Permitted exterior sheathing materials are brick, stone, smooth stucco, and wood, Hardi, or equivalent siding (Hardi & Stucco count as masonry requirement). Stone and stone patterns must be proposed to the ACC. While allowed, Hardi or equivalent siding may only be used where approved by the ACC. Exterior Insulation and Finish System (EIFS), rough/textured stucco, metal, vinyl, and Masonite siding are not permitted.

2.11 Roof

Pitch	Flat roofs are not permitted. Otherwise, the pitch should vary with architectural style (i.e., craftsman and Spanish style homes should have a 4:12 pitch). Porches and patio roofs are permitted to have a roof pitch one half of the standard.
Permitted materials	30-year dimensional asphalt, standing seam metal, natural stone, slate, concrete tile, and clay tile.
Plumbing vents, roof vents, attic jacks, etc.	Must be located on the rear or side slope and never face a street, and must be painted to match the roof materials.
Solar panels, TV dishes and antennas	Must be located on the rear or side slope and never face a street.

2.12 Windows

Permitted	Wood, vinyl, bronze, or a combination thereof.
Not permitted	Reflective glass or glazing, burglar bars, solar screens, or flush-mounted Windows with the exception of Low-E as required by code.
Required	If the design proposes Divided light windows, windows must be Simulated Divided Light or True Divided Light. Grills between the panes of insulating glass is prohibited in the front of the house. Window designs outside the definition of these guidelines must be approved by the ACC.

2.13 Shutters

Each shutter must be half the width and height of the window and conform to the shape of the window. Wood or synthetic wood-type material is permitted. Shutters may be colored to match the architectural styling of the house.

2.14 Fireplaces

Wood burning	Permitted, but chimneys must be sheathed in brick, stone, or stucco (no siding).
Direct vent	Permitted, but vent must not be visible from the street. The vents will be allowed to pop over the roof of the house.
Ventless	Permitted.

2.15 Exterior Paint

A maximum of three colors per dwelling is permitted as applied to wall surface and trim. Masonry, fences, hardware, front door, etc, accepted.

2.16 Exterior Lighting

Permanent exterior lighting must be designed to light only buildings, driveway areas, and walkways, and will not produce glare on neighboring streets, lots, or any part of the property. All ground-level floodlighting fixtures will be depressed or screened from public view and no outdoor lighting will be directed, focused, or broadcast into any buffer zone, greenbelt, or dedicated habitat or conservation easement. All permanent exterior lighting must include only white lights and must be approved in writing by the ACC.

Automatic Lights: No automatic timed flood lights (security sensors will be OK) to protect dark sky. Tree lighting and other decorative automatic lights shall be allowed, but no up lighting shall be allowed. All other lighting must meet the standards set for in The Town of Northlake Unified Development Code.

2.17 Driveways

Width	Single-lane driveways are encouraged. The maximum width for a driveway is 18 feet.
Circular drive	Permitted with ACC approval.
Permitted materials	Concrete with a brushed broom, washed pebble, or stain finish. Stone pavers or brick pavers.
Side-by-Side	When driveways for two adjacent lots are located along the same property line, a low evergreen hedge must be installed between the driveways, from the right-of-way to the front elevation of the house. The installation will be the responsibility of the second homebuilder to construct a driveway. Driveways located side by side must have a minimum distance of (20) twenty feet between them.

2.18 Sidewalks

A minimum three-foot wide all-weather walkway may be constructed from the front porch/door entryway immediately adjacent street or to the driveway. To maintain the rural character of the community, walkways from the front of the house to the immediately adjacent street shall provide pedestrian culverts (exhibit E). There will be no sidewalk along the street frontage to connect to.

2.19 Culverts

All culverts must be stone faced or stamped concrete to match roadway edging detail. Pipes shall be sized and sloped per engineered standards to allow for proper drainage and prevent standing water and/or other issues caused by incorrectly installed culverts. Culvert plans shall be submitted along with house plans for approval by the ACC.

Culverts may only be constructed by contractors approved by the ACC.

2.20 Mailboxes

The Highlands will select a mailbox vender and provide a list of available options to builders to maintain a more uniform streetscape throughout the community.

2.21 Mechanical Equipment

HVAC condensers, tankless hot water heaters, direct vent fireplaces, and other mechanical equipment may not be located along the front elevation or along a side elevation that faces the street (in the event of a corner lot).

2.22 Fencing

Pre-treated cedar three rail fencing will be used in the open space and park areas of The Highlands. Fencing may only be constructed by fence contractors approved by the ACC. Pipe, wire, and similar rural fencing types shall not be allowed. If enclosure is required, a heavy gauge wire mesh ("2 x 4 horse wire") may be added. Please refer to the attached fencing exhibit E or the fence requirements below for different location requirements within The Highlands.

Facing a street	No fencing shall be allowed within the front yard or front building setback of lots.
Rear Fence	Rear fencing will be required on all lots along the native landscape easement line. Access gates to access native landscape easements are acceptable. Stain grade three rail cedar fencing as described in exhibit E. Only natural color stain or pre-treated materials is acceptable. No painted fencing allowed. Must match and tie into neighboring fence to create a uniform structure and look.
Left Boundary	Stain grade three rail cedar fencing as described in exhibit E. Only natural color stain or pre-treated materials is acceptable. No painted fencing allowed.
Right Boundary	Stain grade three rail cedar fencing as described in exhibit E. Only natural color stain or pre-treated materials is acceptable. No painted fencing allowed.
Interior Fencing	Decorative steel fencing may be used on the rear portion of the Oasis zone to enclose swimming pools as required by the Texas Department of Health or deck areas. Black or Oil Rubbed Bronze are the only colors allowed for interior fencing.
Fencing Materials	Stain grade cedar fencing or decorative steel. No white or colored fencing shall be allowed unless otherwise specified herein.

2.23 Retaining Walls

All retaining walls must be constructed of reinforced concrete, natural stone, or engineered stone. Wood retaining walls of any type are prohibited. Walls shall not be permitted for the screening of FM 407 and Florance Road/Mulkey Road.

2.24 Privacy Walls

The overall design of The Highlands is directed towards maintaining the open rural feel of the area. Should privacy walls be desired they may be requested as part of the detailed lot landscaping plan by the homebuilder and will be subject to the review and approval by the ACC and must meet the standards set in the Town of Northlake Unified Development Code.

2.25 Gas Well Setback

The setback required for of any new structure or buildable portion of a lot from an existing gas well shall be 150' from the well bore hole. No setback is required from other related gas appurtenances. Any lots where a gas well is capped or abandoned may be improved and sold as a residential lot, but no structure shall be built over an abandoned well. City agrees to use reasonable efforts to support the Builder in allowing for the residential use of lots that contain an abandoned gas well.

2.26 Accessory Buildings

The overall design of The Highlands is directed towards maintaining the open rural feel of the area and accessory buildings shall not be excessive or oversized. Per the Northlake Unified Development Code, Accessory buildings must match the exterior cladding of the house and meet the minimum construction standards for the zoning district in which the unit is located. The roof pitch shall be between 3:12 and 8:12 and the total roof area cannot exceed 50 % of the main building. Accessory buildings shall be limited in height to fifteen (15) feet. Accessory buildings must be set back from the front building line of the house by twenty (20) feet and may be constructed no less than twenty (20) feet from the transition line between zone B and zone A. Accessory building uses will be limited to shop and/or storage uses. Agricultural uses shall not be allowed. Prefabricated buildings shall only be allowed with ACC approval.

3.0 HOME BUILDING LANDSCAPE CRITERIA

3.1 Tree Preservation

The Highlands property has a scarcity of existing trees. The Developer's intent is to save as many trees as possible. In most cases, the Developer will limit disturbance to the right-of-way and utility easement, leaving the lots in their native form. The homebuilders may remove trees from the footprint of the main structure and the driveway without penalty. Any other trees removed from the lot will be mitigated by the homebuilder according to the Town's mitigation policy.

3.2 Lot Landscaping Plan

The residential lots will be divided into zones. The zones will be delineated by the amount of irrigation that will be allowed within each area. See Exhibit B attached for more information.

Zone (A) – Natural Zone

Zone A is the natural zone. This area will be delineated as up to 100 feet from the rear property line towards the front property line (exact zone defined by landscape buffer on plat). This zone will not be allowed to have an underground automatic irrigation system installed. This Zone will in essence be a continuation of the landscape buffer and an open public landscape easement. This area will be drill seeded with the following seed mixes as supplied by Native American Seed or approved equal.

- Thunder Turf
- Native Texas Mix (Wild Flower Mix)
- Native Trail Mix

Zone B – Native Transition Zone

Zone B is the native transition zone. This area will be delineated as a variable width (minimum 55 feet to a maximum of 125') from the Natural Zone towards the front property line. This area will have minimal irrigation. The irrigation will be provided by the Aerobic Septic System or with an underground automatic irrigation system as a continuation of the Oasis Zone. This area shall be turf grass to match the Oasis Zone or shall be drill seeded with the following seed mixes as supplied by Native American Seed or approved adaptable equal.

- Native Sun Turfgrass
- Buffalo Grass (Seed or Sod)
- Giant Bermuda (Seed or Sprig)

Zone C – Oasis Zone

Zone C is the Oasis Zone. This area will be delineated as 150 feet from the end of the Native Transition Zone to the front lot line (including the ROW). This area shall be irrigated with an underground automatic irrigation system. This area can be any turf grass that is Stage 2 drought tolerant. The turf grass recommended will be from the following.

- Bermuda Sod
- Buffalo Sod
- Turffalo Sod

Zone D – Tree Zone

The tree zone is the front yard and rear yard that fall within the Oasis Zone. Per the Development agreement a minimum of three (3) shade trees as defined in the Northlake Unified Development Code shall be planted on each residential lot. Two (2) (two and one-half inch caliper minimum) of the trees shall be planted in the first 10' of the lot between the front lot line and any fence as "street trees". Trees may be placed on either side of the driveway or in any pattern appropriate to the site and topography. The third tree will be an 8' minimum height ornamental tree and must be planted within the front or rear area of the Tree Zone. Canopy trees shall be located to help with the exposure from the western sun. One (1) (two and one-half inch caliper minimum) of the trees shall be planted within the rear yard.

The following is a list of approved trees:

Canopy Trees
Live Oak

Ornamental Trees
Vitex

Red Oak
Bur Oak
Lacey Oak
Chinese Pistache
Texas Ash
Cedar Elm
Lacebark Elm

Crape Myrtle
Red Bud (Forest Pansy)
Desert Willow
Mexican Plum
Eastern Red Cedar

Zone E – Planting Bed Zone

The planter bed zone will consist of foundation plantings, free standing beds, plantings within pots. The planter beds will have metal, stone with or without mortar, and brick with mortar for bed edging to tie the beds to the products utilized on each façade. Plastic, railroad ties, landscape timbers, other wood products, and brick without mortar are not permitted. The planter beds will be planted utilizing the following plants.

Shrubs

Holly Sp.
Miscanthus Sp.
Loropetalum
Texas Sage
Yucca Sp.
Knockout Rose
Indian Hawthorne
Juniper Sp.
Mexican Feather grass
Butterfly Bush
Spirea
Muhly Grass

Groundcover

Juniper Sp.
Weeping Love Grass
Liriope
Asian Jasmine
Little Blue Stem
Rock Rose
Perennials – Lantana, Frog Fruit, etc
Decomposed Granite
River Rock Varieties

Wood mulch is the preferred bed material. Smooth gravel, crushed granite, or crushed limestone may be approved by the ACC. Rubber mulches and gravel other than river rock are not permitted.

Native Landscaping & Trail Easement

As shown on exhibit D and further defined on the engineered drawings of The Highlands, the native landscaping and trail easement is defined as up to, but not to exceed, the rear 75 feet of each lot. The native landscaping & trail easement will be drill seeded prior to lots being turned over to builders to establish native grasses. Any disturbance to the native landscaping & trail easement caused by builders must be remediated within 30 days of notice. The landscape and trail easement will be bordered by each lot's rear fence line.

Please see the native landscape and trail easement on the engineered drawings for exact location and width of easements for each lot. The native landscape & trail easement may be platted as a separate lot to be owned and maintained by the HOA or may be a defined easement on privately owned lot(s) with the requirement for HOA maintenance. Landscape and screening easements do not count against the net acreage of a privately owned lot for calculation of bulk lot parameters.

Elevation F

Refer to sheet EX 3 for pedestrian crossing

Elevation G

Refer to sheet EX 3 for vehicular crossing

3.3 Irrigation

The only area to receive an underground automatic irrigation on the lots will be the Oasis Zone and/or the Native Transition Zone if needed. This zone will be allowed to be watered per the Northlake water ordinances. Irrigation will be required for the greater of 100% of the front yard or 6,000 SF. All planter beds will be required to have drip irrigation within the beds. All trees will be required to have bubblers around the rootball.

4.0 BUILDER ACTIVITY**4.1 Builder Signage**

One sign per lot is permitted until occupancy. Information displayed is limited to builder name and logo, model name (if applicable), and phone number or website. The maximum size of a sign is 30 inches by 30 inches. Larger signs may be permitted with ACC approval.

4.2 Model Homes/Sales Office

Sales transactions may be performed within a model home. All model homes and their lots must meet the standards of the Design Guidelines. Landscaping for all model homes must exceed the minimum standards of the Design Guidelines. Extensive landscaping is required.

4.3 Parking for Model Homes

No parking is permitted in adjacent lots. A separate on-site parking lot is not allowed.

4.4 Builder Construction Activity

Each Friday, all construction sites are to be cleaned so as to facilitate a pleasing environment to homeowners and prospective buyers, and to eliminate hazards. Each homebuilder will be responsible for street cleaning and trash pickup on the adjoining lots and areas where homes are being constructed. Construction materials will be kept out of the street rights-of-way at all times. Contractor vehicles are to be kept off of the lots at all times. All streets and alleys are to be free from trash, dirt, debris, nails and other metals, and spilled concrete. Portable toilets are required at a minimum of one toilet for every three lots under construction; weekly servicing is required. Builders are responsible for mowing all lots owned.

4.5 Internal Road Damage During Construction

During the course of home construction builders shall be responsible for and replace any damaged sections of concrete streets or concrete stamped ribbon along the concrete street. Damage in front of the lot under construction or damage to adjacent unoccupied lots are the builders responsibility. Damage cause by any heavy equipment contracted by builder is also the responsibility of the builder.

4.6 Sediment Control

All storm water runoff must be filtered prior to entering any streets or adjoining lots. All

slopes greater than 3:1 must be vegetated or covered with Curlex. Sediment control must remain in place and in good repair until construction is complete, landscaping is installed, and lawns are established.

4.7 Flags and Flagpoles

Advertising flags, banners, and pennants are not permitted. Large flag poles over 5 ft. in height, made of heavy duty aluminum, steel, or similar materials, located in the front, back, or side yard are not permitted.

A maximum of one flagpole will be permitted per model home. Appropriate decorative house and yard flags are permitted.

5.0 ARCHITECTURAL REVIEW

5.1 General

No structure or lot alteration will be commenced, erected, placed, moved onto, or permitted to remain on any lot, nor will any existing structure or lot alteration upon any lot be altered in any way that materially changes the exterior appearance of the structure or lot, including any major alteration to the landscaping of the lot, unless plans and specifications depicting said proposed structure, modification, addition, or alteration have been submitted to and approved in writing by the ACC.

Submittals will be delivered/sent to the attention of the ACC, care of:

Highlands Architectural Control Committee (ACC)
909 Lake Carolyn Parkway, Suite 150
Irving, Texas 75039
Phone: 469-533-4100
dylan@realtycapital.com tim@realtycapital.com

Only complete submittals will be reviewed. It is preferred for all final documents to be submitted in PDF form via email.

5.2 Requirements

All plans and specifications will be in the form and will contain the information as may be reasonably required by the ACC in the Design Guidelines, including but not limited to:

1. A site plan showing the location of all proposed and existing structures on the lot and in the parkway including building setbacks, driveways, walkways, street lights, mailboxes, utility boxes, storm drain inlets, proposed parkway trees, and all siltation and erosion control measures;
2. A floor plan;
3. Exterior elevations of all proposed structures and alterations to existing structures, as the structures will appear after all back-filling and landscaping are completed;
4. Specifications of materials, color scheme, lighting scheme, and other details affecting the exterior appearance of all proposed structures and alterations to existing structures; and
5. Plans for landscaping and grading.
6. All plans shall be a maximum of 11" x 17" and be to scale.

5.3 Approval

Upon approval by the ACC of any plans and specifications submitted pursuant to the Design Guidelines, one PDF file of those plans and specifications, as approved, will be deposited for permanent record with the ACC. Additionally, an email of those plans and specifications bearing approval will be emailed to the applicant submitting the same. Approval of any plans and specifications relating to any lot or structure will be final as to that lot or structure, and that approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, those plans and specifications, as approved, and any conditions attached to approval of those plans and specifications.

5.4 Timing

The ACC will review and approve in writing, each submittal or recommend revisions to those aspects of the plans that are inconsistent with the Design Guidelines. The ACC requires a maximum of 14 business days for review and approval of submitted plans. If an applicant has not received a response after two weeks, the applicant should contact the ACC. Instantaneous review is not possible.

5.5 Ongoing Review

Construction will proceed only after approval of the final set of drawings and specifications. Changes that occur during actual construction that differ from approved drawings will require alterations at the homeowner's expense to restore compliance with approved drawings. No drawings or changes at the time of construction are considered approved unless they are approved in writing by the ACC. Construction may not commence without written permission from the ACC.

5.6 Variances

The ACC will review requests from builders and homeowners for modifications from these guidelines on a case-by-case basis. Reasonable variances may be granted upon written request as long as the variance keeps with the overall intent of the Concept Plan for the improvement and development of the property, as well as the preservation of existing natural features.

6.0 APPENDIX

See attached Exhibits A through C.

Exhibit A	Concept Plan
Exhibit B	Lot Landscape Plan
Exhibit C	Perimeter & Open Space Fencing Plan
Exhibit D	Native Landscape Basement
Exhibit E	Pedestrian & Driveway Crossing, Fence Guidelines
Exhibit F	Special Conditions Town Development Agreement

Exhibit A Concept Plan



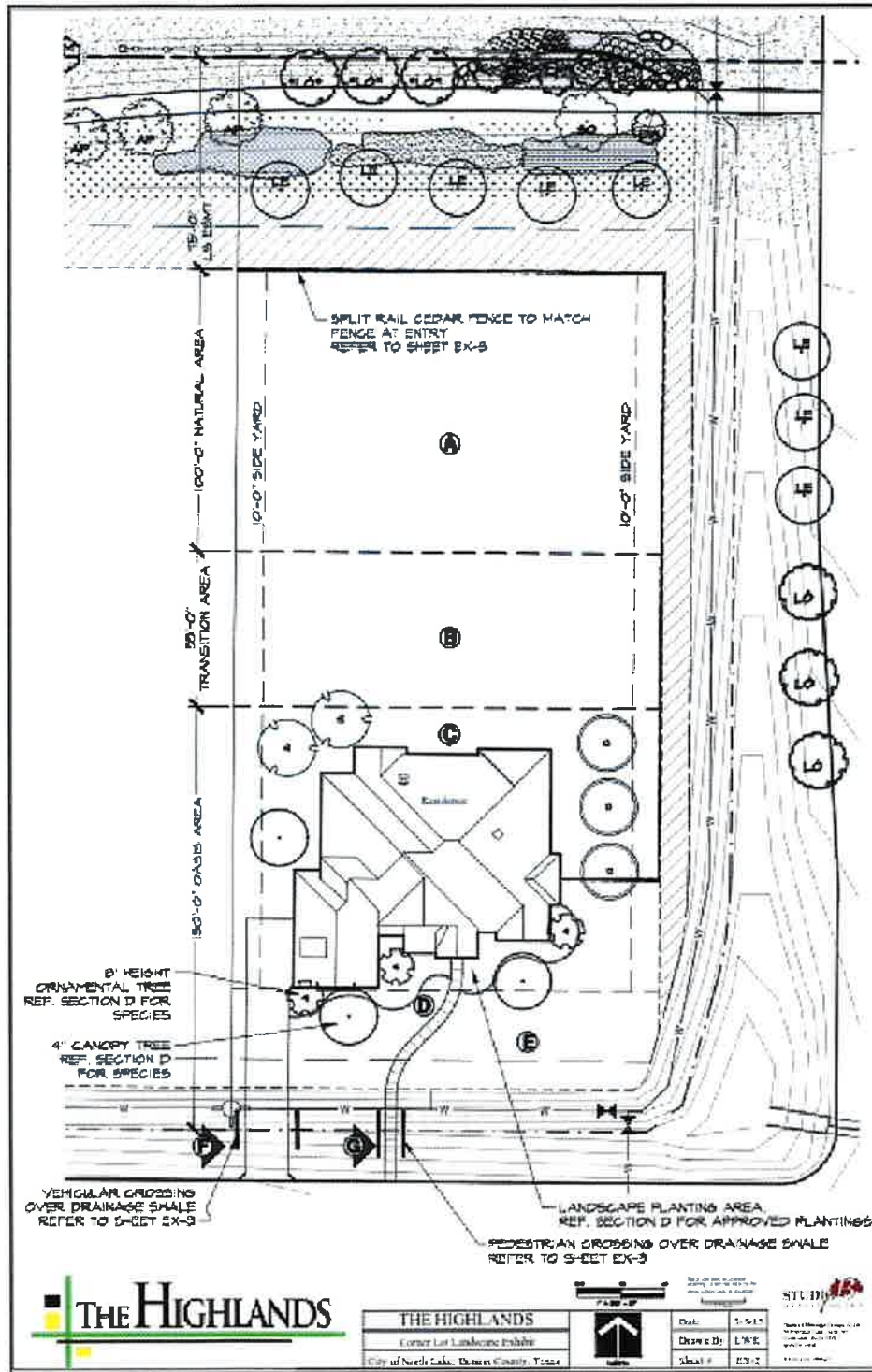


Exhibit D Native Landscaping & Trail Easement



- * HOA will be responsible for mowing the open space once a year.
- ** Fence and Open Space lines are approximate and will be confirmed in the time of final plat.

Exhibit E

Pedestrian & Driveway Crossing, Fence Guidelines

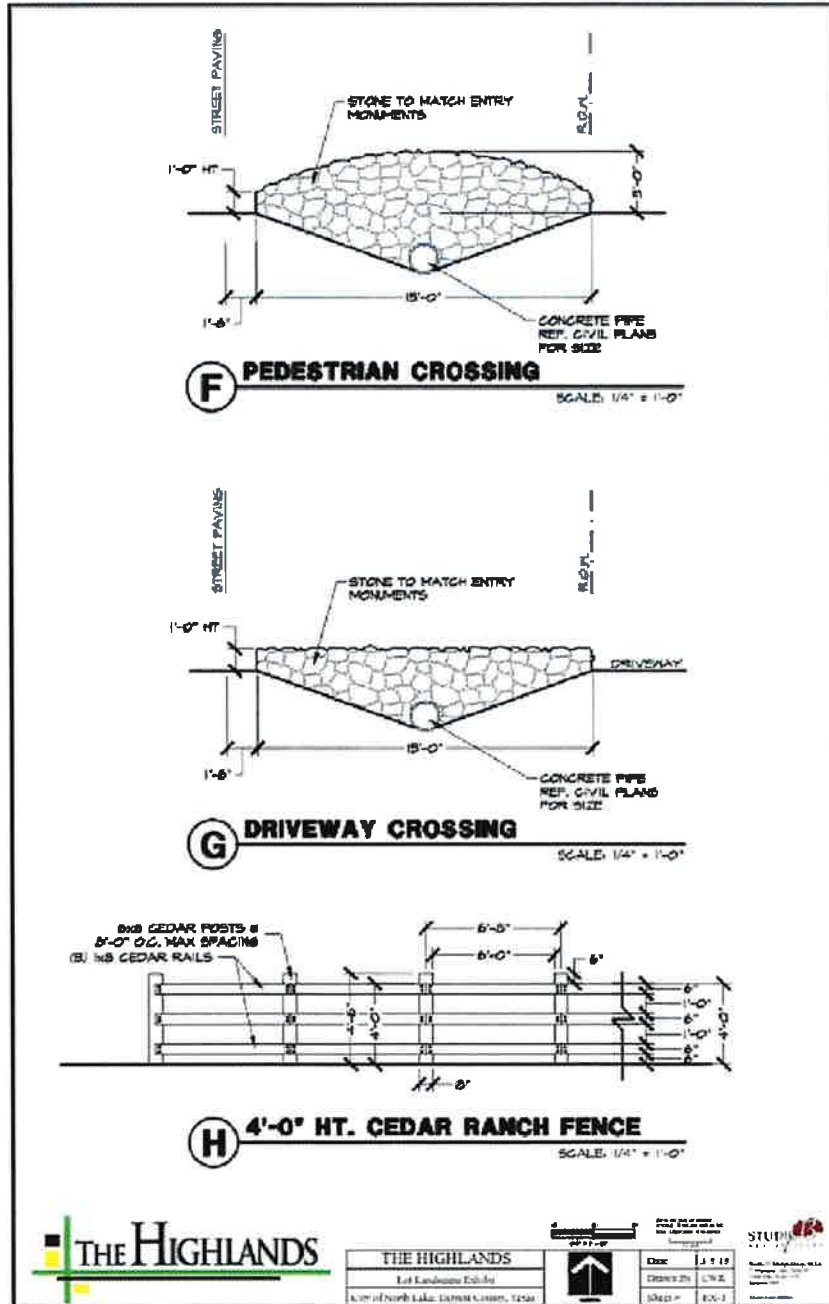


Exhibit F

Special Conditions – Town Development Agreement

In order to protect the quality of the neighborhood and ensure a quality development the Highlands shall have detailed Covenants Codes and restrictions that require at a minimum the following design elements:

- **Roadway:** Roads shall be built using the L2UR section with a 1' detailed strip or flat curb along the north/south entry road. The 1' detailed strip shall be included in the L2U-R section/width.
- **Swale:** RCP Culverts with stone or detailed veneer on the headwall on each side of the driveway.
- **Yard Irrigation:** Shall be required for the greater of 100% of the front yard, or 6,000 SF.
- **Front setbacks:** Shall be large enough to place a leech field and these shall be encouraged to be in the front of homes and may count as irrigation if they have appropriate discharge heads. The front setback may be varied to allow for a custom feel but shall be a minimum of 25'.
- **Driveways:** Paving shall be finished using either a brushed broom, washed pebble or a stain.
- **Garage doors:** All garage doors shall be of stain grade cedar or simulated wood grain.
- **Homes shall be 100% masonry – Hardiboard and stucco shall qualify as masonry.**
- **Street Trees:** A minimum of three (3) shade trees (two and one-half inch caliper minimum) as defined in the Northlake Unified Development Code shall be planted on each residential lot -. Two (2) of the trees shall be planted in the first 10' of the lot between the front lot line and any fence. Trees may be placed on either side of the driveway or in any pattern appropriate to the site and topography.
- **Automatic Lights:** No automatic timed flood lights (security sensors will be OK) to protect dark sky. Tree lighting and other decorative automatic lights shall be allowed, but no up lighting shall be allowed.
- **Mailboxes:** Shall conform to the specified standard for each neighborhood.
- **Open Space:** Shall be consistent with a "prairie character" relative to landscaping, amenities and other features. Excluding the hike and bike trail referenced in this agreement: Trails may be a minimum of 5' wide and paved with concrete or crushed stone where feasible.
- **The setback required for of any new structure or buildable portion of a lot from an existing gas well shall be 150' from the well bore hole. No setback is required from other related gas appurtenances. Any lots where a gas well is capped or abandoned may be improved and sold as a residential lot, but no structure shall be built over an abandoned well. City agrees to use reasonable efforts to support the Developer in allowing for the residential use of lots that contain an abandoned gas well.**

(End of Exhibit D)

EXHIBIT E

ENFORCEMENT AND FINING POLICY

1. Exempted Actions/Remedies. Except as otherwise provided herein (the “Policy”), this Policy and the procedures herein do not apply if the Association files suit seeking a temporary restraining order or temporary injunctive relief, files suit to collect a regular or special assessment or to foreclose under the Association’s lien, or is pursuing a self-help remedy.

2. Generally. The steps and procedures contained in this Policy serve as a general outline of the procedures to follow for enforcement of the covenants, conditions, restrictions and rules contained in the Governing Documents; provided, however, that this Policy does not apply to collection of Assessments and related cost and charges. The Association is not bound to follow the exact procedures in every enforcement matter except as required by the Governing Documents or the laws of the State of Texas. The procedures in this Policy are not intended to constitute a prerequisite or condition precedent to the Association’s ability to pursue a remedy to enforce against any violation or to obtain any legal relief or remedy except as required by the Governing Documents or the laws of the State of Texas.

3. Establishment of Violation. Any condition, use, activity or improvement which does not comply with the provisions of the Governing Documents shall constitute a “Violation” under this Policy for all purposes.

4. Notice of Violation. The Association will forward to the Owner of the Lot in question written notice of the Violation(s) by certified mail, return receipt requested (the “Notice of Violation”). If the Violation can be cured, the Notice of Violation will afford the Owner a reasonable time period to correct or eliminate the Violation(s). A Notice of Violation is not required if the alleged violator received a Notice of Violation relating to a similar Violation within six (6) months of the current Violation and was given a reasonable opportunity to cure the prior Violation. In such event, the Board may impose sanctions as authorized by the Declaration and/or this Policy without notice to the Owner other than the Notice of Sanction/Fine described below. A Notice of Violation is also not required if the Texas law does not require it. The notice of Violation, if required, will state the following:

a. The description of the Violation, reference to the rule or provision being violated, and any property damage caused by the Owner.

b. A description of the action required to cure the Violation and a reasonable time period to cure the Violation in order to avoid sanctions.

c. The proposed sanction to be imposed, including, but not limited to, the amount of any fine, suspension of right to use Common Areas, or the amount claimed to be due from the Owner for property damage, and that the Owner may be liable for reimbursement of attorney’s fees and costs if the Violation continues or the Fine is not paid by a stated date.

d. That the Owner may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Sections 501 et seq.) if the Owner is serving on active military duty.

e. The Owner may, on or before thirty (30) days from the receipt of the Notice of Violation, deliver to the Association a written request for a hearing.

f. If the Violation is not corrected or eliminated within the time period specified in the Notice of Violation, or if the conduct which constitutes a Violation is committed again, or if a written request for a hearing is not made on or before thirty (30) days from the receipt of the Notice of Violation, then the sanctions or actions delineated in the Notice of Violation may be imposed or taken and any attorney's fees and costs will be charged to the Owner.

g. If the hearing described in e. above is to be held before a committee or delegate of the Board, the Notice of Violation will state that the Owner has the right to appeal such decision to the Board.

5. Notice of Sanction/Fine. A formal notice of the sanction, fine or action to be imposed or taken, including the amount of any fine or the amount of any property damage (the "Notice of Sanction/Fine") will be sent by the Association to the Owner by regular first-class mail and by certified mail, return receipt requested, where, within the time period specified in the Notice of Violation, the Violation has not been corrected or eliminated (or, in the case of a recurring Violation, the Violation has reoccurred), or the Association has not timely received a written request for a hearing.

6. Request for a Hearing. If the Owner timely requests a hearing, the hearing may be held in executive session of the Board or a committee appointed by the Board affording the alleged violator a reasonable opportunity to be heard. Subsequent to the hearing, the Association will notify the Owner in writing of its decision and action, except the notice requirement is deemed satisfied if the fine or action is announced at the hearing and the Owner is actually present.

7. Appeal. Following a hearing before a committee of the Board, the Owner shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the manager, president or secretary of the Association within ten (10) days after the date of the Association's written notice to the Owner of the results of the hearing. Any hearing before the Board shall be held in the same manner as provided above for hearings before a committee appointed by the Board.

8. Corrective Action. Where a Violation is determined to exist and referred to the Board, pursuant to any provision of this Policy, the Board may undertake to cause the Violation to be corrected, removed or otherwise abated by qualified contractors if the Board, in its reasonable judgment, determines the Violation may be readily corrected, removed or abated without undue expense and without breach of the peace. Where the Board decides to initiate any action by qualified contractors, the following will apply:

a. The Board must give the Owner and any third party directly affected by the proposed action 10 days prior written notice of the Board's intention to undertake the action.

b. Costs incurred in correcting or eliminating the violation shall be the sole responsibility of the Owner and shall be recovered from the Owner as an Individual Assessment.

c. The Association and its agents and contractors will not be liable to the Owner or any third party for any damages or costs alleged to arise by virtue of any action taken under this Policy when the Association and its agents have acted reasonably and in conformity with this Policy, and no such action shall be deemed a trespass by the Association and its agents and/or contractors.

9. Referral to Legal Counsel. Where a Violation is determined to exist and where the Board deems it to be in the best interests of the Association to refer the Violation to legal counsel for appropriate action, the Board may do so at any time. Such legal action may include, without limitation, sending demand letters to the violating Owner, filing a notice of Violation or non-compliance against the Lot in the real property records, seeking injunctive relief against the Owner to correct or otherwise abate the Violation, and/or filing suit to collect any fine and/or costs incurred to cure the Violation or repair property damage. Attorney's fees and all costs incurred by the Association in enforcing the Declaration and administering this Policy shall become the personal obligation of the Owner and shall be collected as an Individual Assessment.

10. Fines. Subject to the provisions of this Policy and/or the Governing Documents, except for fines levied against Owners commencing work without first receiving written approval from the ACC (see e. below), the imposition of fines will be on the following basis:

a. In the event that the Owner has not cured the Violation within the requested time period (or, in the case of a recurring Violation, the Violation has reoccurred), has not made a timely written request for a hearing, or the Board subsequent to a hearing decides to levy a fine, then the Board may impose a fine up of \$100.00 against the Owner (and occupant, if different from the Owner) and the Lot. In the event that the Board imposes a fine against an Owner and a Lot, the Board or its delegate will mail a notice of the imposition of the fine (the "Notice of Fine") to the Owner as set forth above.

b. If the Violation is still not corrected or cured within thirty (30) days from the date of the Notice of Fine (or, in the case of a recurring Violation, the Violation has reoccurred), then the Board may impose a second fine of \$200.00 against the Owner and the Lot.

c. If the Violation is still not corrected or cured within thirty (30) days from the date of the notice of the second fine (or, in the case of a recurring Violation, the Violation has reoccurred), then the Board may impose a third fine of \$300.00 against the Owner and the Lot.

d. In the event that the Violation is not cured within thirty (30) days from the date of the notice of the third fine (or, in the case of a recurring Violation, the Violation has reoccurred), the Board may impose a per diem fine against the Owner and the Lot in any amount deemed reasonable by the Board of Directors, but not to exceed \$500.00 per day. All fines shall become an Individual Assessment pursuant to Section 7.4.3 of the Declaration and a lien against the Lot.

e. In the event an Owner violated Article 4 of the Declaration by commencing work without having first submitted the required application to and obtained written approval from the ACC, the Board may levy a fine up to the amount of \$500.00. The Board may levy additional fines in amounts up to \$500.00 per day for an Owner's continued failure to submit the required application and/or failure to obtain ACC approval under Article 4 of the Declaration.

11. Notices. Unless otherwise provided in this Policy, all notices required by this Policy shall be in writing and shall be deemed to have been duly given if delivered personally and/or if sent by United States Mail, first-class postage prepaid, to the Owner at the address which the Owner has designated in writing and filed with the Secretary of the Association or, if no such address has been designated, to the address of the Lot of the Owner.

a. Where the notice is delivered by personal delivery, notice shall be deemed to have been given, sent, delivered or received upon actual receipt by any person accepting delivery thereof at the address of the recipient as set forth in such notice, or if no person is there, by leaving the notice taped to the front door of the Residence.

b. Where the notice is placed into the care and custody of the United States Postal Service, notice shall be presumed to have been given, sent, delivered or received, as of the third (3rd) calendar day following the date of postmark of such notice bearing postage prepaid and the appropriate name and address as required herein unless otherwise proven by the recipient to have been received at a later date.

c. Where a day required for an action to be taken or a notice to be given, sent, delivered or received, as the case may be, falls on a Saturday, Sunday, or United States Postal Service holiday, the required date for the action or notice will be extended to the first day following which is neither a Saturday, Sunday or United States Postal Service holiday.

d. Where the Board has actual knowledge that an enforcement action would directly effect a third party (e.g. a tenant or neighbor), or involves a Violation by a party other than the Owner, notices required under this Policy may be given, if possible, to such third party in addition to the Owner. Notwithstanding any notice sent to a third party, the Owner remains the party responsible for compliance with the requirements of the Governing Documents. The Board shall accept a response from any such third party only upon the written direction of the Owner of the Lot upon which the Violation exists.

e. Where the interests of an Owner have been handled by a representative or agent of such Owner, or where an Owner has otherwise acted so as to put the Association on notice that his interest in a Lot has been and is being handled by a representative or agent, any notice or communication from the Association pursuant to this Policy will be deemed effective for all purposes if given to such representative or agent.

f. Where an Owner transfers record title to a Lot at any time during the pendency of any procedure prescribed by this Policy, such Owner shall remain personally liable for all costs and fines under this Policy. As soon as practical after receipt by the Association of a notice of a change in the record title to a Lot which is subject of enforcement proceedings under this Policy, the Board may begin enforcement proceedings against the new Owner in accordance with this Policy. The new Owner shall be personally liable for all costs and fines under this Policy which are the result of the new Owner's failure and/or refusal to correct or eliminate the Violation in the time and manner specified under this Policy.

12. Cure of Violation During Enforcement. An Owner may correct or eliminate a Violation at any time during the pendency of any procedure prescribed by this Policy. Upon verification by the Board that the Violation has been corrected or eliminated, the Violation will be deemed no longer to exist. The Owner will remain liable for all costs and fines under this Policy.

13. Definitions. The definitions contained in the Association's Governing Documents are hereby incorporated herein by reference.

14. Severability and Legal Interpretation. In the event that any provision herein shall be determined by a court with jurisdiction to be invalid or unenforceable in any respect, such determination shall not affect the validity or enforceability of any other provision, and this Policy shall be enforced as if such provision did not exist. Furthermore, in the event that any provision of this Policy is deemed by a

court with jurisdiction to be ambiguous or in contradiction with any law, this Policy and any such provision shall be interpreted in a manner that complies with an interpretation that is consistent with the law. In the event any provision of this Policy conflicts with the Declaration, the Declaration controls.