

ELECTRONICALLY RECORDED 20070192086
RESTRICTED PGS

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

HUNTER VALLEY

**LAS COLINAS
CITY OF IRVING
DALLAS COUNTY, TEXAS**

Residence is purchased and occupied on the Lot. It is further understood that each Owner assumes all responsibility for the maintenance and the condition of any trees on his Lot.

(f) it understands that failure to submit and obtain prior written MACC approval of plans and specifications for any modifications or additions to its Residence or any Structure on its Lot may result in the imposition of fines against the Owner and/or the removal of such modifications or additions at Owner's expense.

(g) 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.

(h) it should direct any issues, concerns or questions regarding the Common Area or the Association to the Managing Agent, whose name can be obtained by contacting the Builder or Declarant.

(i) its property is also subject to the Master Restrictive Covenants covering all of Las Colinas and Supplementary Declaration No. 130 covering the Subdivision and that The Las Colinas Association has jurisdiction over the Subdivision and enforcement rights with respect to the Master Restrictive Covenants and Supplementary Declaration No. 130. In addition to any dues payable to Hunter Valley Townhome Owner Association, Inc., Owner will owe dues to The Las Colinas Association.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



[Handwritten signature]

John F. Warren, County Clerk

Dallas County TEXAS

May 30 2007 09:53 AM

FEE: \$ 260.00

20070192086

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COVENANTS, CONDITIONS AND RESTRICTIONS
FOR**

HUNTER VALLEY

**LAS COLINAS
CITY OF IRVING
DALLAS COUNTY, TEXAS**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HUNTER VALLEY**

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL BY THESE PRESENT:

MAY This Declaration (herein so called) is executed effective as of 25th day of MAY, 2007, by **HUNTER VALLEY, LP**, a Texas limited partnership ("**Declarant**").

RECITALS:

A. Declarant is the owner of the real property in Dallas County, Texas described on Exhibit A attached hereto, which Declarant is developing as an addition ("**Subdivision**") to the City of Irving to be known as **Hunter Valley** ("**Property**").

B. The Subdivision is one village situated within a larger master-planned multi-use project within the City of Irving, commonly known as "Las Colinas." The entire Las Colinas project is covered by at least one set of master restrictive covenants and each single-family residential village, such as Hunter Valley, is additionally covered by a second layer of village-related restrictive covenants.

C. Declarant desires to establish a planned residential community of single family attached townhome units on the Property and, accordingly, has executed this Declaration to impose the covenants, conditions, restrictions, and easements herein described upon the Property, in addition to those otherwise imposed upon the Property by virtue of being part of Las Colinas, specifically including, without limitation, those contained in Supplemental Declaration No. 130 dated January 17, 2006, recorded on March 24, 2006, under Clerk's number 200600108567, in the official records of Dallas County, Texas.

D. Declarant has deemed it desirable for the enforcement of this Declaration and the efficient preservation of the amenities in the Subdivision to create a non-profit corporation (hereinafter defined as the "**Association**") under the laws of the State of Texas to which shall be delegated and assigned the power of administering and enforcing the assessments, conditions, covenants, easements, reservations and restrictions of this Declaration, including levying, collecting and disbursing the assessments, and whose directors will establish bylaws by which the Association shall be governed through its Board (hereinafter defined), for the purpose of exercising the functions aforesaid.

**ARTICLE 1
ESTABLISHMENT**

Section 1.1 Establishment of Covenants, Conditions and Restrictions.
Declarant hereby declares that the Property will be owned, held, transferred, sold,

conveyed, leased, occupied, used, insured and encumbered subject to the terms, covenants, conditions, restrictions, liens and easements (collectively, "**Covenants**") set forth in this Declaration which will run with the land and shall be binding upon all persons or entities hereafter acquiring title to or any interest in any portion of the Property. These Covenants are imposed for the purposes of establishing a general scheme for development of the Property, enhancing the value of the Lots and Residences (defined below), and establishing restrictions for residential use for the benefit of Declarant and the Owners (defined below). Declarant does not guarantee that all of these purposes will be accomplished through the creation and imposition of the Covenants. This Declaration does not intend or purport to amend or revise any portion of the Master Restrictive Covenants, but is intended to coordinate with the Master Association and MACC in working together for the best interest of Hunter Valley.

Section 1.2 Definitions. The terms set forth below shall have indicated meanings when used in this Declaration; other terms are defined elsewhere herein and shall have the meaning given to them in this Declaration.

"Assessments" means the Maintenance Assessments, Special Assessments and Special Individual Assessments provided for in Article 6.

"Association" means the Hunter Valley Townhome Owners Association, Inc., a Texas non-profit corporation, or such other homeowners' association name selected and available at the time of formation and established as provided in this Declaration.

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

"Bylaws" means the Bylaws of the Association.

"City" means the City of Irving, Texas.

"Common Area" means: (i) any areas or improvements within the Property owned by the City, the Association, or any other governmental entity, but which are required to be maintained by the Association; (ii) all roofs installed on Residences for which the Association has the sole responsibility to repair, replace and maintain; (iii) any landscape easements, wall maintenance easements, private drainage easements, private access easements, landscape and screening easements, pedestrian access or maintenance easements required by the City or recorded by separate instrument; and (iv) those areas, if any, which are owned by an Owner, but on which are located monuments, signs, fences, landscaping, berms, sidewalks, irrigation systems or other improvements that may be maintained by the City or, if determined by the Board, by the Association. The Common Area shall also include all improvements on or to any portion of any of the areas described in the preceding sentence. Declarant shall at all times have and retain the right, but without obligation whatsoever, to effect minor redesigns or reconfigurations of the Common Area and to execute any open space declarations applicable to the Common Area which may be permitted in order to reduce

property taxes, and to take whatever steps as may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes.

"Declarant" means HUNTER VALLEY, LP and any other person or entity who is designated as a successor Declarant in writing pursuant to the provisions of this Declaration and recorded in the Real Property Records of Dallas County, Texas. Upon designation of such successor Declarant, all rights, obligations and responsibilities of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that there shall be only one Declarant hereunder at any given time.

"Declarant Control Period" means that period of time during which Declarant controls the operation and management of the Association as provided in Article 5.

"Lot" means any of the individual platted building lots reflected, or to be reflected, on the Plat that are to be used for residential purposes as herein described. Where the context indicates or requires, the term Lot includes any structure on the Lot.

"Master Association" means The Las Colinas Association.

"MACC" means the Architectural Control Committee established by the Master Restrictive Covenants.

"Managing Agent" means any Person who has been engaged and designated by the Board to manage the daily affairs and operations of the Association.

"Master Restrictive Covenants" means the restrictive covenants covering all of Las Colinas (including the Subdivision) which are recorded in Volume 73166, Page 1001 of the Deed Records of Dallas County, Texas, as amended and supplemented, specifically including, without limitation, Supplementary Declaration No. 130 recorded under Clerk's No. 20060018567 in the real property records of Dallas County, Texas.

"Occupant" means any Person occupying all or any portion of a Lot for any period of time, regardless of whether such Person is a tenant of the Owner of such Lot.

"Owner" means any Person owning fee title to any Lot, but excluding any mortgagee or beneficiary under a deed of trust until such time as it acquires legal title to a Lot.

"Person" means any individual, corporation, limited liability company, partnership or other entity of any kind or types whatsoever.

"Plat" means (i) initially, the Preliminary Plat, and thereafter the Final Plat, for the Property submitted to and approved by the City, or any other applicable governmental entity; (ii) after recordation thereof, the final Plat of the Property as recorded in the Real Property Records of Dallas County, Texas; and, (iii) any replat of, or amendment to, the foregoing made by Declarant in accordance with this Declaration. A copy of the plat for the Property is attached hereto as Exhibit B.

"Public View" means visible from the front street elevation.

"Residence" means the improvement located on each Lot that is designed for use as a single family residential dwelling in conformity with this Declaration.

"Residential Structure" means a building containing two (2) or more Residences that (i) is located on two (2) or more adjacent Lots, and (ii) has one (1) or more party walls separating the Residences comprising the building.

"Street" means any paved road, that is typically within a fifty foot (50') or sixty foot (60') right-of-way and serves the front of a Lot upon which a Residence is constructed.

"Structure" means any structure (other than a Residence) and includes, without limitation, a fence, driveway, sidewalk, planting, landscaping, irrigation system, wall, tennis court, swimming pool, outbuilding, playground equipment, or other improvement of any kind or type.

"Vehicle" means trucks used for commercial purposes, boats, jet-skis, any type of watercraft, mobile homes, motor homes, boat trailers, or any other type of trailers.

ARTICLE 2 USE PROVISIONS

Section 2.1 Permitted Uses.

(a) **Lots Limited to Residential Use.** Except as otherwise provided in this Declaration, Lots shall be used only for single family, private residential purposes and activities reasonably related thereto.

(b) **Common Area Uses.** The Common Area shall be used only for recreational and other similar purposes as approved by the Declarant or the Association. The Common Area consisting of landscaping, maintenance, wall maintenance easements, or similar areas shall be used for such purposes or similar purposes as approved by the Declarant or the Association. No damage to the Common Area or any part thereof shall be committed by any Owner, Occupant or invitee. The cost to repair any such damage shall be levied against the Owner of the Lot responsible for such damage as a Special Individual Assessment. No Owner or Occupant may maintain, treat, landscape, sod, place or erect any improvement or structure of any kind on the Common Area without the prior written approval of the Board.

(c) **Sales Offices and Similar Uses.** Declarant may permit one or more signs, sales offices, or trailers to be maintained on Lots for the purpose of facilitating sales of Residences on the Property. Real estate brokers, Owners and their agents may show Lots, for sale and every Person purchasing a Lot recognizes that the Declarant, its agents and designated assigns, and permittees, shall have the right to (a) use Lots, and improvements erected thereon, for sales offices, field construction

offices, storage facilities and general business offices; (b) maintain fluorescent lighted or spot lighted model homes which are open to the public for inspection seven (7) days per week for such hours as Declarant or its permittees deems appropriate or necessary; and (c) conduct any other activities on Lots to benefit sales efforts. Declarant may also grant the right to maintain construction trailers on the Lots and to use Lots for signage, sales offices, and similar purposes to other Persons constructing Residences on the Property by written designation.

Section 2.2 Prohibited Uses and Activities.

(a) **No Further Subdivision.** No Lot may be further subdivided without the written consent of the Declarant or the MACC. Without regard to any such permitted subdivision or combination, the Lots involved shall continue to be treated as single individual Lots hereunder for all other purposes, including voting in the Association and assessing and collecting Assessments.

(b) **Parking and Vehicle Restrictions.** All automobiles, trucks, sport utility vehicles and Vehicles shall be parked, stored or placed so as not to be visible from any Street or from ground level view from an adjoining Lot, except for temporary parking in the driveway constructed on a Lot. Vehicles shall not be permitted to park overnight on the Streets, driveways, or other areas within the Property. No Vehicle, automobile, truck, or sports utility vehicle that transports flammable or explosive cargo may be parked or stored within the Property. No inoperative or unlicensed automobiles, trucks, sports utility vehicles or Vehicles may be parked or stored, other than in an enclosed garage, within the Property. All work (other than routine maintenance) on automobiles, trucks, sports utility vehicles and Vehicles, shall be performed only in an enclosed garage. The foregoing provisions shall not restrict the parking of automobiles, trucks, sports utility vehicles and other Vehicles as necessary in connection with service calls, the construction of Residences or other Structures on Lots, deliveries, or short-term guests.

(c) **Specific Use Restrictions.** The Property is restricted solely to residential and related uses; accordingly, no industrial, business, commercial, professional, manufacturing, mineral or other similar use shall be permitted on any part of the Property. This Section shall not be construed so as to prohibit the conduct of a reasonable amount of in-home work, such as computer work or similar activities, provided that such work or activity: (i) does not involve the parking of Vehicles, automobiles, trucks or sports utility vehicles of employees, consultants, clients, or other parties who do not occupy the Residences in question, (ii) the activity does not involve door-to-door solicitation of residents of the Property; and (iii) does not involve the delivery or pick-up of any materials or services. This restriction shall not apply to any activity conducted by the Declarant with respect to its development and sale of Lots or its use of any Lots it owns in the Property.

(d) **Pet and Animal Restrictions.** Only regular household pets such as cats and dogs shall be permitted on the Property and then only for personal use and not for any business or commercial use such as breeding, kennel operations and the

like. No other animals shall be permitted to be maintained upon the Property, including the following: cows, horses, bees, hogs, sheep, goats, poultry, poisonous or dangerous reptiles or skunks. No more than two (2) domesticated household pets are permitted in any Residence. All pets shall be kept within the fenced-in area of an Owner's Lot and shall not be permitted to run free through the Property. When outside of the fenced-in area or the interior of the Residence, all pets must be on a leash. The pet's owner is responsible for the immediate removal of all pet debris.

(e) **Outdoor Burning Restrictions.** Outdoor burning of trash, leaves, and other items is prohibited. This restriction shall not be construed as prohibiting outdoor cooking on barbecue grills in connection with use of a Residence.

(f) **Trash/Garbage Disposal.** Trash, garbage, debris of any kind and other waste shall at all times be kept in clean, well maintained, sanitary containers for regular scheduled pickup for removal of such items. Trash, garbage or debris of any kind or other waste shall not be dumped on the ground of any Lot or in any Common Area.

(g) **Occupancy.** Each Lot shall be improved with an attached single family Residence. No Person shall occupy any garage or other outbuilding or any Vehicle as a residence at any time.

(h) **Outbuildings.** No outbuildings or storage sheds shall be allowed upon any Lot. Any violation of this provision will be just cause for the removal of the outbuilding or storage shed from the Lot.

(i) **Projections from Structures.** Window air conditioning units and other similar projections are prohibited. Any projection through the roof of any structure on the Property shall require the prior written approval of the Declarant or the ACC.

(j) **Private Water/Sewer Systems.** Each Residence shall be connected to the City water and sanitary sewer system, and no private water well or water, sanitary or storm sewer system is permitted within the Property unless constructed by the Declarant. If Declarant uses private drainage easements in areas that necessitate or contain a private sub-surface storm sewer drainage system, then such sewer lines are to be kept freely running and unobstructed at all times. If the lines become obstructed, all parties that benefit from their function shall be required to equally and promptly share in the cost of repair or replacement of the lines.

(k) **Changes in Grade.** Except for such changes as are reasonably necessary to facilitate construction of a Residence on a Lot, no Owner shall change the grade of any Lot except in compliance with all applicable laws. After Declarant has developed the Lots, the general grading, slope and drainage plan of a Lot may not be altered, and no dams, berms, channels or swales may be constructed or excavated without the prior written approval of Declarant (or the MACC), the City (if applicable) and other appropriate agencies having authority to grant such approval.

(l) **Visible Activities - Outdoors.** Outdoor drying of clothes is prohibited. Lawn mowers, rakes, carts, and other yard equipment shall be stored and screened from view from adjoining Lots and Streets when not in use.

(m) **General Restriction - Nuisances.** In general, no condition shall be allowed to exist on a Lot which, by sight, smell, or sound, shall constitute a public or private nuisance or unreasonably disturbs any other Owner in the use and enjoyment of its Lot or the Common Area.

ARTICLE 3 CONSTRUCTION PROVISIONS

Section 3.1 Plan Approval Required. No Residence shall be repaired, altered or improved, and no Structure shall be constructed, placed or installed within the Property, until the plans therefore have been approved in writing by the MACC in accordance with the provisions of the Master Restrictive Covenants, including Supplementary Declaration No. 130.

Section 3.2 Failure to Obtain Approval. The construction, repair, replacement, installation, or placement of any Structure or the improvement of a Residence or a Lot without the prior written approval from the MACC shall constitute grounds for the imposition by the Association of a fine against the Owner of said Lot not to exceed Five Hundred and No/100 Dollars (\$500.00), in addition to any fine or penalty which may be imposed by the MACC or the Master Association. A fine levied under this Section, after notice and hearing as required by law, shall be charged to the Owner's assessment account as a Special Individual Assessment payable upon demand and secured by the lien created in Article 6.

Section 3.3 Specific Construction Provisions.

(a) **Setbacks.** All Residences and other Structures shall be constructed in conformity with the setback requirements of the City and the building lines reflected on the Plat.

(b) **Structure Size and Type.** Each Residence shall have the minimum number of square feet of enclosed air-conditioned area as set forth by the City in the applicable zoning ordinance. Each Residence on a Lot shall be of new construction and no mobile homes or manufactured housing shall be permitted on the Property except on a temporary basis in connection with construction or sales activities.

(c) **Garage Requirements.** Each Residence shall have at least a two car attached garage constructed as a part thereof. No carports or awnings of any type are allowed on any portion of the Property.

(d) **Drive/Walkway Requirements.** All driveways and sidewalks shall conform to applicable City and other governmental specifications and regulations.

(e) **Ancillary Structure Provisions.** All ancillary Structures (as described below) shall conform to the requirements of this Section:

(1) **Antennae/Satellite Dishes.** The erection, construction, placement or installation of any television, radio, or other electronic tower, serial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcasts or for any means of communication upon a Lot or upon any improvement thereon is prohibited except as provided for herein or as approved by MACC. This prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time (the "**FCC Rules**").

(2) **Fences and Walls.** All fences and walls (excluding retaining walls described in (6) below) shall comply with the requirements of the Master Restrictive Covenants and with all City requirements. No fence or wall may be constructed, repaired, rebuilt, or relocated if it impedes or obstructs drainage.

(3) **Trash Containers.** All trash and recycling containers shall be screened from view from Streets on non-designated trash pick-up days.

(4) **Hedges.** Hedges shall be maintained at a height that is in conformity with the height of fences and walls. No hedge shall be maintained in a manner that obstructs any sidewalk or the visibility at intersections of Streets and/or alleys.

(5) **Retaining Walls.** Retaining walls, other than those constructed by the Declarant, require prior written approval by the MACC. Except for those built by Declarant or its affiliates, retaining walls which generally face an alley or are either between Residences or along or adjacent to the side or rear property lines of Lots shall be constructed of CCA treated lumber or stone materials unless the use of other materials has received prior written approval from the MACC. Except for those built by Declarant or its affiliates, retaining walls which generally face a Street or are along or adjacent to the front property lines of Lots shall be constructed of stone or masonry materials unless the use of other materials has received the prior written approval from the MACC. In the event two (2) Lots benefit from or are affected by a retaining wall, the retaining wall shall be treated as a party wall under Section 4.1 herein. Should a retaining wall only benefit or affect one (1) Lot, then the Owner of such benefited or affected Lot shall be fully responsible for the maintenance, repair and replacement of the retaining wall.

(6) **Mailboxes.** Mailboxes shall be of a design and constructed of materials approved by the MACC and installed in a location approved by the MACC.

(7) **Signage.** Except for signs related to development or marketing by Declarant or a homebuilder, no signage may be maintained on any Lot or in the Common Area other than: (A) signs placed on a Lot, which do not exceed five (5) square feet, of tasteful design which advertise the Lot or Residence for sale; (B) political signage placed on Lots, which shall be allowed so long as temporary in nature and which must be removed promptly after the election; (C) spirit signs (announcing the involvement of children in athletics or school programs), which shall only be allowed if temporary in nature; and (D) signs displaying the name of a security company, which shall be permitted provided that such signs: (i) are tastefully designed and do not exceed one (1) square foot in size; (ii) are ground mounted; and (iii) are limited to one (1) in the front yard and one (1) in the rear yard of each Lot.

No other sign(s) of any kind or character, including any signs which: (A) are in the nature of a "protest" or complaint against the Subdivision, the Association, Master Association, MACC, Declarant or any homebuilder; (B) describe, malign or refer to the reputation, character or building practices of the Subdivision, Declarant or any homebuilder; and/or (C) discourage or otherwise impact or attempt to impact anyone's decision to acquire a Lot or Residence in the Subdivision or elsewhere from Declarant, shall be displayed to the Streets or otherwise to the public view on any Lot, Residence, Structure or Common Area or any homebuilder.

Each Owner hereby grants permission to the Association (or its duly authorized agents) to enter upon a Lot or any part of the Property and remove any sign, billboard or advertising structure that does not comply with the above requirements and, in doing so, shall not be subject to any liability to any Person whatsoever for trespass, conversion, or any claim for damages in connection with such removal. The Association's cost to remove any sign(s) shall be added to the Owner's assessment account as a Special Individual Assessment, be payable upon demand and secured by the lien created in Article 6. No Person shall engage in any picketing on any Lot, easement, right-of-way or Common Area within or adjacent to the Property, nor shall any Vehicle, automobile, truck or sports utility vehicle parked, stored or driven in or adjacent to the Property bear or display any signs, slogans, symbols, sounds, words or decorations intended to create controversy, invite ridicule or disparagement, or interfere in any way with the exercise of the property rights, occupancy or permitted business activity of any Owner, Declarant or Builder.

(8) **Window Treatments.** No window on a Residence may be covered with bed sheets, any type of paper, poster board, aluminum foil or other reflective material. From and after thirty (30) days from the date title to a Lot with a Residence constructed thereon is transferred to a new Owner, no window that is visible from any Lot, Street, alley or Common Area may be covered with bed sheets, any type of paper, poster board, aluminum foil or other reflective material.

(9) **Holiday Decorations.** Holiday lighting and decorations are allowed subject to: (i) their installation occurring no earlier than thirty (30) days prior to the holiday being celebrated; and (b) their removal occurring no later than thirty (30) days after the date of the holiday being celebrated. Such lighting and decorations must be appropriate for the holiday being celebrated. Except as provided above, holiday lighting and decorations are prohibited.

Section 3.4 Construction Materials. All construction materials shall conform to the following provisions:

(a) **Exterior Materials.** All exterior construction materials shall be subject to approval by the MACC and shall conform to any and all City ordinances.

(b) **Roof Materials.** Minimum twenty-five (25) year warranty shingle or equivalent is required. Color of shingles to be earth tones or similar color. All roofing materials must be fireproof and conform to City requirements, and are subject to MACC approval.

Section 3.5 Construction Period and Process. Construction of any Residence shall be pursued with all due diligence and, in any event, shall be completed within nine (9) months after commencement. Construction of any other Structure shall be completed within the time periods specified in the plan approval process. All areas under construction shall be maintained in a clean, safe condition, and debris, trash, and rubble shall be stored in appropriate containers and promptly removed from the Property.

Section 3.6 Landscaping. All Lots shall be landscaped in accordance with the landscaping plan approved by the MACC. The front yard of each Lot shall be initially landscaped by Declarant or a builder and subsequently maintained by the Association. No other landscaping in the front yard may be installed or planted by the Owner or Occupant thereof without first obtaining the written approval from the MACC. In the event any trees, shrubs, bushes or other landscaping contained within the front yard of a Lot require replacement, the Association shall cause same to be replaced and charge the costs thereof to the Lot Owner's assessment account as a Special Individual Assessment which is payable on demand and secured by the lien created in Article 6. Any landscaping in the rear yard which interferes with or obstructs proper drainage may be removed by the Declarant, the Association or its agents with the costs of removal charged to the Lot Owner's assessment account as a Special Individual Assessment which is payable upon demand and secured by the lien created in Article 6.

ARTICLE 4 **MAINTENANCE PROVISIONS**

Section 4.1 Owner's Obligation to Repair and Replace. Each Owner shall be solely responsible for the repair and replacement of the following: (i) the exterior masonry of the Residence; (ii) **gutters** and downspouts; (iii) wood trim; (iv) exterior

doors; (v) foundation of the Residence; (vi) yard drains; (vii) windows; (viii) light fixtures and light bulbs; (ix) landscape maintenance and replacement of the yard area within any fenced portion of a yard including rear yard grass, trees, shrubs, flowers and plants; (x) sidewalks adjacent to Lot; (xi) hose bibs; (xii) exterior electrical outlets; (xiii) mail box; (xiv) air-conditioning/heating units and compressors; and (xv) window screens. The Owner shall be solely responsible for the maintenance of the foundation by appropriate watering and other measures reasonably related to proper foundation maintenance.

Section 4.2 Association's Obligation to Repair, Maintain and Replace.

The Association shall be solely responsible for the repair, maintenance and replacement of the following: (i) roofs; (ii) roof top vents; (iii) chimney vent caps; (iv) front yard landscaping; (v) wood fences; and (vi) irrigation and sprinkler systems. The Association shall be responsible for the maintenance of the following: (i) exterior masonry of a Residence; (ii) gutters and downspouts; and (iii) wood trim. The Association will also be responsible for pest control, including within the Residential Structures. If a dispute arises regarding the allocation of the responsibility to maintain, repair or replace with respect to a Residence or a Lot, the dispute will be resolved in favor of delegating responsibility to the individual Owners. Residence and Lot maintenance, repair and replacement responsibilities that are allocated to the Association are intended to be narrowly construed and interpreted to limit and confine the scope of the Association's responsibility. It is the intent of this Article that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners. Should the need to repair, replace or maintain by the Association be caused, in whole or in part, by the negligence or willful act of an Owner or Occupant, including their family members and guests, then the costs thereof may be charged to the Lot Owner's assessment account as a Special Individual Assessment which is payable on demand and secured by the lien created in Article 6.

Section 4.3 Party Walls and Retaining Walls.

(a) **General Rules of Law to Apply.** Each wall or fence which is built as part of the original construction of the Residence upon the Property and placed on the dividing line between the Lots shall constitute a party wall for purposes of this Section 4.3. If a party wall is on one Lot or another due to an error in construction, the midpoint of the party wall is nevertheless deemed to be on the dividing line for purposes of this Section. Each lot sharing a party wall is subject to an easement for the existence and continuance of any encroachment by the party wall as a result of construction, repair, shifting, settlement, or movement in any portion of the party wall, so that the encroachment may remain undisturbed as long as the party wall stands. Each retaining wall which benefits or affects two (2) Lots, shall also be considered a party wall for purposes of repair or replacement under this Article 4. To the extent not inconsistent with the provisions of this Article, the general rules of law of the State of Texas regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than non-structural alterations to the interior surfaces of such walls which attach to or

are a part of Residences (i.e., the surfaces of such walls facing the interior of the Residence); provided, however, that under no circumstances shall any alterations or attachments be made to any party wall surface that would create or result in the creation of any in-the-wall alarms, whether as part of a security system or otherwise, or any other device, item, component or system designed for the creation or emission of sound.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. The cost of reasonable repair and maintenance of a retaining wall will be shared equally between the Owners of Lots who are benefited or affected by the same retaining wall. Each Lot is subject to a reciprocal easement for the maintenance, repair and replacement of a party wall or a retaining wall.

(c) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereon in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. If a retaining wall is damaged or destroyed by any type of casualty, any Owner whose Lot is affected or benefited by the retaining wall may restore it and request contribution for 1/2 of the cost from the other Owner whose Lot is benefited or affected by the retaining wall without prejudice, however, to the right of the restoring Owner to seek a larger contribution from others under any rule of law regarding liability for negligent or willful acts or omissions. In addition, prior to the commencement of any repairs or restoration to the Lot or the Residence, whether to repair a party wall or a retaining wall, the Owner must comply with any and all provisions as are set forth in Articles 2 and 3 hereof.

(d) **Weatherproofing.** Notwithstanding any other provision in this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall weatherproof the exposed portion of the wall against the elements and shall bear the entire cost of such weatherproofing.

(e) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to the Owner's successors in title.

(f) **Dispute Resolution.** In the event of any dispute arising concerning a party wall or a retaining wall under the provisions of this Article, each such dispute shall first be referred to the Board for resolution prior to any Owner commencing an action at law or in equity.

Section 4.4 Declarant/Association Right to Perform. If any Owner fails to maintain the condition of its Lot, or the Residence or other Structures thereon as contemplated by this Article 4, and fails to take action to correct such defect within ten (10) days after the Declarant or the Association has furnished written notice thereof to

such Owner, then the Owner of such Lot hereby grants permission to the Declarant or Association (or its duly authorized agents and contractors) to enter upon such Lot and perform those duties which the Owner failed to perform without liability whatsoever to such Owner or any Person for trespass, conversion, or any claim for damages. The cost of performing such duties shall be added to the Owner's assessment account as a Special Individual Assessment, be payable upon demand, and shall be secured by the lien provided for in Article 6. In case of emergency, however, the obligation to provide the Owner written notice and opportunity to cure is hereby waived and the Declarant or the Association may take whatever action it deems necessary to protect persons or property, the cost of the action taken to be added to the Owner's assessment account as a Special Individual Assessment.

Section 4.5 Easements for Repair, Maintenance, Replacement and Drainage. Each Owner grants to the Association, the Board, and the Declarant an easement over, across, under and through each Lot, including the improvements thereon, to access, repair, and maintain all Lots, Residences and Residential Structures in accordance with such obligations as are contained in this Article. Each Owner also grants to the Association, the Board, and the Declarant an easement to access, repair and maintain all facilities and improvements within any wall, access, drainage, entry, fence, landscape, or other similar easement as set forth on any Plat (including, but not limited to, any Plat attached hereto as Exhibit B-1 and B-2). By acquisition of a Lot, each Owner further grants, creates and conveys unto the Association, the other adjacent Owners and the Declarant a perpetual Drainage Easement (herein so called) 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 from the Property subject to the Declaration over, through, under and 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 within 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) or 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 Declarant, 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. The cost of performing such removal shall be added to the Owner's assessment account as a Special Individual Assessment, be payable upon demand, and shall be secured by the lien provided for in Article 6.

ARTICLE 5 OWNERS' ASSOCIATION

Section 5.1 Establishment. The Association has heretofore been or will hereafter be created as a Texas nonprofit corporation by the Declarant. Each Owner of a Lot shall be a member ("**Member**") in the Association and such membership is appurtenant to and shall not be separated from ownership of a Lot. Upon the transfer of a Lot, the new Owner shall automatically become a Member of the Association. The term of existence of the Association and other matters pertaining to its operation are set forth in its Certificate of Formation (attached hereto as Exhibit C) and the Bylaws (attached hereto as Exhibit D). The Association is established to enforce this Declaration and the Covenants, to promote the interests of the Owners as residents of the Property, and to enhance the value of the Lots as a part of a harmonious, high quality, residential subdivision. The Association is separate from the Master Association. The Master Association also has jurisdiction over the Subdivision and has assessments or dues in addition to those payable to the Association.

Section 5.2 Voting Power.

(a) **Members.** Each Owner other than Declarant shall be entitled to one vote for each Lot owned; provided, however, following the Declarant Control Period, the Declarant shall be entitled to one (1) vote for each Lot it owns. If more than one Person owns an interest in a Lot, they shall combine their vote in such way as they see fit, but there shall be no fractional votes, and no more than one vote with respect to any Lot.

(b) **Declarant Control Period.** The Declarant Control Period commences on the date this Declaration is recorded and terminates on the earlier of (i) five (5) years from the date this Declaration is recorded; or (ii) sixty (60) days after title to seventy-five percent (75%) of the Lots have been conveyed to Owners other than Declarant or any builder of Residences; or (iii) upon Declarant electing to terminate the Declarant Control Period by the filing of notice of termination in the real property records of Dallas County, Texas.

(c) **Turnover Procedure.** Following the termination of the Declarant Control Period, Declarant shall cause control of the Association to be turned over to the general membership of the Association ("**Turnover**"). Within sixty (60) days of the termination of the Declarant Control Period, the President of the Association shall call a special meeting of the Board of Directors. At such meeting, the Board of Directors shall set a date for a subsequent meeting of the members of the Association at which the Turnover will occur ("**Turnover Meeting**"), which meeting shall be at least thirty (30) but no more than sixty (60) days after the special meeting. The Board of Directors shall provide at least thirty (30) days notice to the Members of the date and location of the Turnover Meeting. Prior to the Turnover Meeting, a representative of the Declarant, a representative of the Managing Agent, if any, and one or more of then-existing resident directors shall meet as necessary to cause the turnover of all records associated with the existence, maintenance and operation of the Association. At the Turnover Meeting,

the then-existing directors appointed by Declarant shall submit their written resignations and new directors shall be elected, as necessary, to fill the Board in accordance with the Bylaws; provided, however, that notwithstanding anything contained in the Bylaws, Declarant shall have the right to appoint at least one (1) member of the Board as long as Declarant owns at least one Lot. From and after the date of Turnover, Declarant shall have no further responsibility or liability associated with the Association, the operations of the Board, the maintenance of any Common Area, or any other matters associated with the Common Area. In that regard, at and as of the Turnover Meeting, the Association shall execute and deliver to the Declarant a general release, in form acceptable to Declarant, releasing Declarant from all liability associated with the development, construction, operation and maintenance of the Common Area. From and after Turnover, to the extent that any dispute arises between the Association and the Declarant regarding a matter that is allegedly not covered by the release or regarding the release itself, then such dispute, if any, shall be resolved through the dispute resolution procedures provided in Section 10.11.

(d) **Board of Directors Election.** Following the Declarant Control Period, the Board shall be elected as provided in the Bylaws of the Association. The Board shall act by majority vote as provided in the bylaws.

(e) **Specific Powers of Board.** Without limiting the authority granted to a board of directors under the Texas Non-Profit Corporation Law, the Board shall have the following specific powers on behalf of the Association:

- (1) to enforce the provisions of this Declaration;
- (2) to enter into contracts;
- (3) to retain third parties, as necessary, to assist the Board in carrying on the Association's activities, including engineers, accountants, lawyers, architects, land planners, professional management, and other consultants;
- (4) to take such action as necessary to maintain the Common Area in good order and condition;
- (5) to acquire property, services and materials to carry out its duties;
- (6) to purchase insurance covering potential liability for use of the Common Area and for other risks;
- (7) to borrow money for Association purposes, as set forth herein, and to pledge Common Area or the right to collect assessments, including assignment of its lien rights as collateral, to secure payment of such loan;

(8) to initiate and defend litigation, arbitration and other similar proceedings;

(9) to promulgate reasonable rules and regulations for access to and use of Common Areas as well as a policy establishing a schedule and procedures by which the Board may assess fines against Owners for violations of this Declaration, or any rules and regulations promulgated by the Board;

(10) to establish and collect reasonable fees for the use or rental of any recreational facilities on the Common Area; and

(11) to establish and collect transfer fees, a reasonable fee for copying and furnishing copies of the Association's governing documents and furnishing a Resale Certificate as required by law. This function and the authority to collect and receive such fees may be delegated or assigned by the Board to the Association's Managing Agent.

Section 5.3 Officers. The Association will have such officers as are set forth in the Bylaws.

Section 5.4 Dissolution. So long as Declarant owns record title to any Lot, the Association shall not be dissolved. Once Declarant is divested of all ownership interest in the Property, the Association may be dissolved in accordance with the requirements therefor contained in the Texas Non-Profit Corporation Law and, in addition to any such requirements, upon the written consent of Owners owning at least seventy-five percent (75%) of the Lots. Upon such dissolution, the assets of the Association shall be donated to a nonprofit organization with purposes similar to the Association and selected by a majority of the Board.

ARTICLE 6 ASSESSMENTS

Section 6.1 Power to Establish Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association all such Assessments as are levied pursuant to the terms of this Declaration. The Association is empowered to establish and collect Assessments as provided in this Article 6 for the purpose of obtaining funds to maintain the Common Area, perform its other duties, and otherwise preserve and further the operation of the Property as a first class, quality residential subdivision. The purposes for which Assessments may be used include, without limitation, maintaining, operating, managing, repairing, replacing or improving the Common Area or any improvements thereon; mowing grass and maintaining grades and signs; paying legal fees and expenses incurred in enforcing this Declaration; paying expenses incurred in collecting and administering assessments; paying insurance premiums for liability and fidelity coverage for the Board and the Association; and satisfying any indemnity obligation under the articles or bylaws. The Board may reject partial payments and demand payment in full of all amounts due

and owing the Association. Upon the receipt of payment from an Owner whose account reflects a past-due balance, and regardless of any written instruction from the Owner to the contrary, the payment shall be applied to the unpaid charges on the account in the following order: (a) Special Individual Assessments; (b) attorney's fees; (c) interest; (d) late charges; (e) collection fees and other costs of collection; (f) Transfer Fees and other charges related to the transfer of title; (g) Working Capital Contribution (as hereinafter defined); (h) Special Assessments; and (i) Maintenance Assessments.

Section 6.2 Commencement of Assessments.

(a) **Owner other than Declarant.** Unless otherwise provided by separate agreement by and between Declarant and any Person, the Assessments shall commence as to each Lot upon its conveyance by Declarant to any Person that is not an affiliate of Declarant.

(b) **Declarant.** 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 order to cover any shortfall in the operating budget or to reduce the total Maintenance Assessment which would otherwise be necessary to be levied against all Lots to cover the estimated expenses of the Association. Any such subsidy may, at the option of the Declarant, be deemed a loan to the Association from the Declarant. Any such loan shall be conspicuously disclosed as a line item in the budget and shall be made known to the membership. The payment of such subsidy by the Declarant in any one year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

Section 6.3 Regular Annual Maintenance Assessments.

(a) **Annual Budget.** For each calendar year or a part thereof during the term of this Declaration, the Board shall establish an estimated budget of the expenses to be incurred by the Association for the forthcoming year in performing its duties. Based upon such budget, the Association shall then assess each Lot an annual fee (the "**Maintenance Assessment**") which shall be paid by each Owner in advance as follows: quarterly on the first day of each January, April, July and October, unless the Board determines a different schedule. The Association shall notify each Owner of the Maintenance Assessment for the ensuing year by December 15 of the preceding year, but failure to give such notice shall not relieve any Owner from its obligation to pay Maintenance Assessments. Any Maintenance Assessment not paid within thirty (30) days of the date due shall be delinquent and shall thereafter bear interest as provided in Section 6.6(f). As to any partial year, Maintenance Assessments on any Lot shall be appropriately prorated.

(b) **Limits on Maintenance Assessments.** The initial Maintenance Assessment for each Lot shall not exceed Two Hundred Dollars (\$200.00) per month. Thereafter the Board may increase the Maintenance Assessment annually to meet the anticipated needs of the appropriate budget, but the Maintenance Assessment may not

be increased in any year by an amount in excess of twenty-five percent (25%) above the previous year's Maintenance Assessment, 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.

(c) **Uniform Assessments.** Maintenance Assessments for all Lots shall be uniform. At Declarant's option, Declarant may pay or waive the Maintenance Assessment on Lots owned by Builders for a period up to the first (1st) day of the month following the ninetieth (90th) day after record title to a Lot has been transferred to a Builder.

Section 6.4 Special Assessments. The Association may impose special assessments ("**Special Assessments**") to make capital improvements to the Common Area, to satisfy its indemnity obligations under the articles or bylaws, or for other purposes deemed necessary by the Board. Any Special Assessment proposed by the Association must be approved by 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. The time for paying any Special Assessment (which may be in installments) shall be as specified in the approved proposal therefor.

Section 6.5 Special Individual Assessments. The Board shall have the power to levy special individual assessments ("**Special Individual Assessments**") against a particular Lot as follows:

(a) To cover costs or reimburse the Association for expenses incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or rules of the Association, or costs incurred as a consequence of the conduct of the Owner or Occupant of the Lot, their licensees, invitees or guests;

(b) As fines levied pursuant to this Declaration and the Bylaws;

(c) To reimburse the Association for any other costs or expenses specifically authorized by this Declaration to be levied against a particular Lot; and

(d) To reimburse the Association for any cost or expense, including reasonable and necessary attorneys' fees, incurred in enforcing the terms of this Declaration or any rules and regulations of the Association.

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

Section 6.6 Liability for and Enforcement of Assessments.

(a) **Personal Liability.** Each Owner shall be personally liable for all unpaid Assessments and charges due on a Lot regardless of when such Assessments or charges accrued or became past-due. The grantor and grantee shall be jointly and severally liable for all unpaid Assessments and charges due on the date title to a Lot is transferred to the grantee. Grantee shall, nonetheless, retain a right of contribution against the grantor.

(b) **Reservation, Subordination, and Enforcement of Assessment Lien.** Declarant hereby reserves for the benefit of itself and the Association, a lien (the "**Assessment Lien**") against each Lot to secure payment of the Assessments imposed hereunder. Each Owner, by accepting conveyance of a Lot, shall be deemed to have agreed to the reservation of the Assessment Lien. The Assessment Lien is hereby expressly declared subordinate to the liens of any valid first lien mortgage or deed of trust encumbering a particular Lot. Sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a first mortgage or deed of trust (whether by exercise of power of sale or otherwise) or any proceeding in lieu thereof, shall only extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from the obligation to pay Assessments that become due after such sale or transfer or the Assessment Lien securing the payment thereof. The Assessment Lien may be non-judicially foreclosed by power of sale in accordance with the provisions of Section 51.002 of the *Texas Property Code* (or any successor provision) or may be enforced judicially. Each Owner, by accepting conveyance of a Lot, expressly grants the Association a private power of sale in connection with the foreclosure of the Assessment Lien. The Board is empowered to appoint a trustee, who may be a member of the Board, to exercise the powers of the Association to non-judicially foreclose the Assessments Lien in the manner provided for in Section 51.002 of the *Texas Property Code* (or any successor statute). The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(c) **Notices of Delinquency or Payment.** The Association, the Association's attorney or Declarant may file notice of any delinquency in payment of any Assessment in the Real Property Records of Dallas County, Texas. Upon the timely curing of any default for which a notice was recorded by the Association, the Association through its attorney is hereby authorized to file of record a release of such notice upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and filing a release. Upon request of any Owner, any title company on behalf of such Owner or any Owner's mortgagee, the Board through its agents may also issue certificates evidencing the status of payments of Assessments as to any particular Lot (i.e., whether they are current or delinquent and if delinquent, the amount thereof). The Association or its Managing Agent may impose a reasonable fee for furnishing such certificates or statements.

(d) **Suit to Recover.** The Association may file suit to recover any unpaid Assessment and, in addition to collecting such Assessment and interest thereon, may also recover all expenses reasonably expended in enforcing such obligation, including reasonable attorneys' fees and court costs.

(e) **Late Charges and Collection Fees.** If any Assessment or any part thereof remains unpaid after thirty (30) calendar days from and after the due date established by the Board, a late charge shall be assessed against the non-paying Owner for each month or any part thereof, that any portion of any Assessment remains unpaid. Should any Assessment be payable in installments, the Association is authorized to accelerate the entire Assessment and demand immediate payment thereof. The late charge shall be in the amount of Twenty-five and No/100 Dollars (\$25.00) per month. The Association's Managing Agent shall be entitled to charge an Owner a monthly collection fee to compensate Managing Agent for its administrative costs and efforts to collect and process the late payment of Assessments. A service charge in the amount of Twenty And No/100 Dollars (\$20.00) shall be charged for each check that is returned because of insufficient funds or any other reason. The amount of late charges and service charges may be adjusted, from time to time, by the Board consistent with any changes in the administrative costs to collect unpaid Assessments or the Association's bank charges. All late charges, collection fees, service charges and attorneys' fees assessed or incurred due to late payment of Assessments shall be charged to an Owner's Assessment account which shall be part of the delinquent Assessment and shall be payable and secured in the same manner as herein provided with regard to Assessments. The Board, in its sole discretion, has the right to waive all or part of any of the charges provided for in this subparagraph (e).

(f) **Interest on Past Due Amounts.** All Assessments past due more than thirty (30) days, unpaid fines and other amounts owed to the Association by any Owner, except accrued but unpaid interest, which are not paid when due shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum, but not in excess of the maximum rate allowed by applicable law.

(g) **Suspension of Right to Use Common Area.** In addition to the other powers herein granted, the Board may suspend the right of Owner to use any of the Common Area during the time that such Owner is delinquent in paying any Assessment.

(h) **Eligibility and Suspension of Voting Rights.** If an Owner is involved in litigation with the Association as to a conflict of interpretation of this Declaration, the rules and regulations promulgated by the Association, the bylaws of the Association and/or the amount of delinquent assessments, then Owner is not a Member in good standing. Furthermore, to be in good standing with the Association, the Member must have all assessments of every type and category paid up to date, have no outstanding financial obligations to the Association that are delinquent and shall have no current, uncured violations of the Covenants on one of more Lots within the Subdivision. Eligibility to vote, to participate in any Association meetings or activities, or to serve as a representative, director or officer of the Association shall be predicated

upon being a Member in good standing with the Association. An Owner may only cure a delinquency at a meeting to regain the right to vote by paying all outstanding amounts (including interest, fines, and penalties) by cashier's or certified check or other good funds acceptable to the Board.

(i) **Working Capital Contributions.** Upon the transfer of record title to a Lot to any Owner (other than Declarant), a contribution shall be made by or on behalf of such Owner at closing to the working capital of the Association (the "Working Capital Contribution") in an amount equal to One Hundred-Fifty Dollars (\$150.00). This amount is not refundable, shall be in addition to, not in lieu of, the Maintenance Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into escrow and disbursed therefrom to the Association or to the Declarant if the Association is not yet established and shall be used for covering operating and other expenses incurred by the Association pursuant to the terms of this Declaration and the bylaws of the Association.

(j) **Transfer Fees and Fees for Issuance of Resale Certificates.** The Board may, at its sole discretion, enter into contracts with third parties to oversee the daily operation and management of the Association. These third parties may, and probably will, have fees, which will be charged to an Owner for the transfer of a significant estate or fee simple title to a Lot and the issuance of a Resale Certificate. The Association or its agent shall not be required to issue a Resale Certificate until payment for the cost thereof has been received by the Association or its agent. Transfer fees and fees for the issuance of a Resale Certificate are not refundable and may not be regarded as a prepayment of or credit against any other Assessments, and are in addition to the Working Capital Contribution in Section 6.6(i) above. This Section does not obligate the Board or any third party to levy such fees.

ARTICLE 7 **COMMON AREA**

Section 7.1 Right to Use Common Areas. Each Owner, the members of that Owner's immediate family, and the Owner's guests (provided guests are accompanied by an Owner) shall have the right to use the amenities and recreational facilities, if any, constructed upon the Common Area for its intended purposes as herein provided. The Declarant and the Association shall have the right to enter on and use the Common Areas at all times to exercise their rights or (in the case of the Association) perform its duties hereunder.

Section 7.2 Specific Facilities. Specific facilities, if any, to be located in the Common Area shall be determined by Declarant. The Declarant and the Board may promulgate reasonable rules and regulations for use of these facilities.

Section 7.3 Maintenance of Common Areas. The Association shall be solely responsible for all maintenance, repair, replacement, and improvement of the Common Areas, utilizing the Assessments for such purposes as herein provided.

Declarant shall have no responsibility for maintenance, repair, replacement, or improvement of the Common Area after initial construction.

Section 7.4 Risk of Loss - Use of Common Areas. Neither Declarant, the Association nor any of its officers, directors, agents, representative or assigns (collectively, the "**Released Parties**"), shall in any way be considered insurers or guarantors of the health, safety or welfare of any Owner, including his or her family members, guests and lessees (collectively, the "**Common Area Users**") while within or upon the Common Areas, nor shall the Released Parties be liable for any damage or loss by reason or as a consequence of any person's use or enjoyment of the Common Areas. In consideration of the right to use and enjoy the Common Areas, the Common Area Users hereby release, relinquish and forever discharge the Released Parties from and against any claim, demand or cause of action for damage or loss for personal injury, death or property damage resulting from the use of the Common Areas and based, in whole or part, on any act of omission of the Released Parties. Each Common Area User shall be individually responsible and assume all risk of loss, damage or injury associated with his or her use of the Common Area and from any loss, damage or injury resulting from the acts of third parties.

Section 7.5 Conveyance of Common Area to Association. Declarant shall convey the Common Area to the Association, free and clear of any liens, claims or encumbrances, not later than sixty (60) days after Declarant no longer owns a Lot in the Property.

ARTICLE 8 **SPECIFIC DECLARANT RIGHTS**

Section 8.1 Specific Declarant Rights to Amend Declaration. Declarant, without joinder of the Board, the Association, or the other Owners may amend this Declaration for any reason for two (2) years following the date the Declaration is filed of record and, thereafter, to provide clarification, to correct any errors or to cause the Declaration to be in compliance with any City 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).

Section 8.2 Easement/Access Right. Declarant reserves a general easement over all Streets, roads, rights of way, alleys and utility, maintenance, landscaping, wall and other easements in the Property and over the balance of the Common Area for access for the purpose of finishing development of the Property as a subdivision and as otherwise reasonably necessary to effect Declarant's rights hereunder. Such easements and rights shall expire at such time that Declarant no longer owns a Lot.

Section 8.3 Assignment of Declarant Rights. Declarant may assign its rights to a successor Declarant hereunder by execution of a written document,

recorded in Real Property Records of Dallas 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.

Section 8.4 Declarant's Easement to Inspect & Right To Correct, Declarant's Right to Install Improvements in Setback and Other Areas. For a period of ten (10) years after the filing of this Declaration with the Office of the Dallas County Clerk, Declarant reserves for itself and for Declarant's architect, engineer or other design professionals and construction personnel the right, but not the obligation or the duty, to inspect, monitor, test, redesign, correct, modify, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including any Residence and Residential Structure, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. This Section may not be construed to create any duty on the Declarant or the Association, and may not be amended without the Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants Declarant an easement of access and entry over, across, under, and through the Property, including any improvement thereon, for the purposes contained in this Section.

Declarant, in connection with development of the Property and construction of Residences 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 area on, along and/or between the boundary line of a Lot and the building or setback lines applicable to such Lot) within a 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, shall advise the Owner(s) in writing of its intent to assume such maintenance and repair obligations or if the Association has otherwise agreed to assume maintenance or repair of any such improvement pursuant to another provision of this Declaration. 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 City 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 its expense.

Section 8.5 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 any Lot and no joinder of any other Owner shall be required to give effect to such rights. Each Owner, by acceptance of a deed to any Lot, constitutes and irrevocably appoints the Declarant as its duly authorized attorney-in-fact, with full power of substitution, to provide any necessary approval to exercise the powers set forth in this Section. 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 8.5 shall expire at such time Declarant no longer owns a Lot.

Section 8.6 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.

Section 8.7 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) termination of the Declarant Control Period; (ii) completion of any facilities in the Common Area by Declarant; or (iii) assignment of Declarant's rights hereunder pursuant to Section 8.3, 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 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, nor 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 9 INSURANCE

Section 9.1 Procurement of Insurance. Insurance coverage on the Property shall be governed by the following provisions:

(a) Purchasing Policies: Primary Coverage:

(1) The Board of Directors or its duly authorized agent shall have the authority to purchase and, to the extent such policies and coverages are available, shall purchase insurance policies upon the Property sufficient to provide the coverages required by this Article 9, for the benefit of the Association and the Owners and their mortgagees, as their interest may appear, and provisions shall be made for the issuance of certificates on mortgage endorsements to the mortgagees of Owners. All policies shall be written with a company authorized to sell insurance in the State of Texas.

(2) Owners must obtain insurance coverage at their own expense to cover all aspects of the interior of their Residence, including finish-out and all fixtures, upon their personal property and for their personal liability and living expense and such other coverage as they may desire, including damage for mold. Damage to the interior of the Residence, including finish-out, fixtures and personal property of an Owner, and any damage caused by or contributed to by mold, shall not be covered by any insurance purchased by the Association. In no event shall the insurance coverage obtained and purchased and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their mortgagees.

(b) Casualty. With the exception of the items and casualties set forth in Section 9.1(a)(ii) above for which the Association will not obtain coverage, the Association shall make every reasonable effort to ensure that the casualty policy and endorsements purchased or requested in furtherance of this Section 9.1 (b) cover all Residential Structures, Residences, buildings and improvements upon the Property and all personal property of the Association located in or upon the Property and/or used to maintain the Property (including but not limited to Residences and other improvements thereon) shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. The Association shall undertake its best efforts to bind coverage for a Residential Structure prior to or upon the transfer of title of a Residence to a Person other than Declarant. With the exceptions to coverage provided in Section 9.1(a)(ii) above, such coverage shall provide protection against:

(1) Loss damage by fire and other hazards covered by a standard extended coverage

(2) Such other risks, as determined from time to time, as are customarily covered by casualty policies with respect to buildings of the type existing on the Property.

Notwithstanding anything to the contrary contained herein, the Association's insurance policies shall not be required to cover damage for mold, damage to the interior of a Residence, including finish-out, fixtures and personal property, and the Owners expressly assume all liability therefore.