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AFTER RECORDING, RETURN TO:

Legacy Homes
4050 West Park Blvd.
Plano, Texas 75093
Att'n: Mike Gavin

5779 00038

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

TUSCANY SQUARE

**CITY OF FRISCO
COLLIN COUNTY, TEXAS**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCANY SQUARE

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

KNOW ALL BY THESE PRESENT:

This **Declaration** (herein so called) is executed effective as of 1 day of April, 2004, by **LEGACY/MONTEREY HOMES, L.P.** ("**Declarant**").

RECITALS:

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

B. 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.

C. 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 imposes upon the Property the covenants, conditions, restrictions, liens and easements (collectively, "**Covenants**") set forth in this Declaration 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. The Covenants touch and concern title to the Property, 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.

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.

"**ACC**" means the architectural control committee established pursuant to this Declaration.

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

"**Association**" means the Townhomes of Tuscany Square 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.

"**City**" means the City of **Frisco**, Texas.

"**Common Area**" means, specifically, Lot 1, Block X and Lot 2, Block X as shown on the Plat of Phase One, and Lot 1, Block S, Lot 2, Block X and Lot 3, Block X as shown on the Plat of Phase Two. The Common Area also includes: (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, private drainage easements, private access easements, landscape and screening easements, pedestrian access or maintenance easements reflected on the Plat, 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 LEGACY/MONTEREY HOMES, L.P. including any affiliate of any Partner thereof 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 Records of Collin 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.

"Design Guidelines" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to all aspects of construction, including allowed materials and the placement, location, alteration, maintenance and design of any improvements within the Property, and all amendments, modifications, supplements and interpretations thereof.

"HUD" means the U.S. Department of Housing and Urban Development.

"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.

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

"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.

"Phase" means a particular phase developed upon the Property. Declarant may impose, as provided in Section 3.3(d), additional or different restrictions on each Phase. If Declarant annexes additional property into the Property as provided in Section 8.1, it may designate the area annexed as a particular Phase, and may impose, as provided in Section 3.3(d), additional or different restrictions on such area.

"Plat" means (i) initially, the Preliminary Plat, and thereafter the Final Plat, for any Phase of the Property submitted to and approved by the City, 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 Collin County, Texas; and, (iii) any replat of, or amendment to, the foregoing made by Declarant in accordance with this Declaration. Copies of "mini-plats for Phase One and Phase Two are attached hereto as Exhibits B-1 and B-2, respectively. The term "Plat" shall also include the final recorded plat of any additional property annexed into the Property pursuant to Section 8.1.

"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 the 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. Additional uses for purposes such as schools, churches, or similar activities may be permitted within the Property, provided such use conforms to all applicable zoning requirements and has received the prior written approval from the Association and the Declarant.

(b) **Common Area Uses.** The Common Area designated on the Plat shall be used only for recreational and other similar purposes as set forth on the Plat or 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 set forth on the Plat or 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 maintain one or more signs, sales offices, or trailers 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 or lease, and every Person purchasing a Lot recognizes that the Declarant, its agents and designated assigns, 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 deems appropriate or necessary; and (c) conduct any other activities on Lots to benefit sales efforts. Declarant or the ACC 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 ACC. Lots may be combined for the purpose of constructing a single residence on more than one Lot only upon written approval of the Declarant or the ACC. 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 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. Temporary parking shall mean the parking of a Vehicle on a driveway for no more than twenty-four (24) hour time periods. Trucks with tonnage in excess of one ton and Vehicles with signage or advertising displays shall not be permitted to park overnight on the Streets, driveways, or other areas within the Property. No Vehicle, automobile, truck, sports utility vehicle that transports flammable or explosive cargo may be parked or stored within the Property. No inoperative or unlicensed Vehicles, including automobiles, trucks and sports utility vehicles, may be parked or stored, other than in an enclosed garage, within the Property. All work on Vehicles, including automobiles, trucks and sports utility vehicles (other than routine maintenance) shall be performed only in an enclosed garage. The foregoing provisions shall not restrict the parking of trucks 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 persons 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. Unless expressly permitted by the Declarant and the Association, no portion of the Property may be used as a church and activities normally associated with a church may not be conducted on the Property. 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 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 as a residence at any time.

(h) **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.

(i) **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.

(j) **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 ACC), the City (if applicable) and other appropriate agencies having authority to grant such approval.

(k) **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.

(l) **General Restriction - Nuisances.** In general, no condition shall be allowed to exist on a Lot which, by sight or smell (as determined exclusively by the ACC), 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 therefor have been approved in writing by the Architect or Declarant as provided in this Article 3.

Section 3.2 Establishment of ACC.

(a) **Initial Appointment.** The ACC shall consist of three (3) members; the initial members of the ACC shall be appointed by the Declarant.

(b) **Term and Subsequent Appointments.** The members of the ACC shall serve until they resign or are removed by the party appointing them to the ACC (which the appointing party may do at any time). Subsequent appointments to the ACC shall be made by the Declarant until such time as the Declarant either relinquishes such power by written notice to the Board, or the Declarant no longer owns any Lot; thereafter appointments to and removals from the ACC shall be made by the Board. The ACC or Declarant may engage the services of a third party to review plans and specifications pursuant to this Article.

(c) **Compensation; Fee for Review.** No member of the ACC shall be entitled to compensation for its services. The ACC may impose a reasonable charge for reviewing plans.

Section 3.3 Approval Process.

(a) **Submission of Plans.** Any party wishing to alter, repair or improve a Residence, or install, place or construct any Structure on the Property, shall submit one complete set of plans and specifications therefor to the ACC for its approval prior to commencing any type of alteration, improvement, construction. Such plans and specifications shall include, if requested by the ACC, engineering information, landscaping description, and construction plans showing the location and elevations of the proposed Residence or Structure and the materials to be used in constructing the same, all in sufficient detail to enable the ACC to evaluate the proposed request. The ACC may request additional information, including samples of proposed materials to aid it in its decision process. After receipt of a complete set of plans and specifications, the ACC shall promptly review the same and notify the Person submitting whether it approves the plans or whether it requires changes thereto. Alternately, the ACC may disapprove a set of plans by so noting thereon and returning it to the Person submitting, accompanied by a statement of the reasons for disapproval. No construction, alteration, repair, removal, replacement, construction or installation shall be commenced on any portion of the Property unless and until the plans therefor have been approved in writing by the ACC or Declarant. Construction and/or installation of the project must be completed within sixty (60) days of the receipt by Owner or Owner's representative of written approval of the proposed construction or installation. Failure to complete the project within the time period set forth herein shall be cause for the ACC to void and nullify any prior approval and require the Owner or Person undertaking the project to cease construction or installation until additional written approval for the continuation of the project has been received from the ACC. The ACC is authorized, but shall have no obligation, to grant variances and extensions of the time period necessary to complete the project.

(b) **Time for Review/Approval.** The ACC shall undertake to approve or disapprove all plans submitted for construction within thirty (30) days after the date it receives a complete set of plans and specifications therefor; if the ACC fails to specifically approve or disapprove of any plans within such thirty (30) day period, then the ACC shall be deemed to have disapproved the plans submitted.

(c) **Review Standards.** The ACC, in reviewing and approving plans for alteration, repair or improvement of a Residence, or the installation, placement or construction of a Structure, shall use commercially reasonable efforts to promote and ensure a high level of taste, design quality, aesthetic harmony, and conformity throughout the Property, consistent with the standards established by this Declaration and the Design Guidelines.

(d) **Design Guidelines/Building Standards.** The Declarant or the ACC may, but is not required to, establish specific guidelines and building standards to assist Persons in determining the type of Structures and Residences, which may be constructed on the Property. Pursuant to Section 8.1, Declarant may annex additional Property to become a portion of the Property, and may develop the overall Property in various Phases. Declarant may establish differing restrictions, guidelines and building standards for each such Phase of the Property, which may impose more restrictive or less onerous building standards with respect to a particular Phase. The ACC or Declarant may amend or modify such guidelines or standards from time to time in its sole discretion. Such guidelines or standards shall supplement this Declaration and are general guides to permitted construction within the Property, but shall not diminish the authority of the ACC and Declarant to approve plans as otherwise herein provided. All Design Guidelines promulgated by the ACC, or any amendments thereof, must be approved by the Board.

(e) **No Waiver of Future Approvals.** Each Owner acknowledges that the members of the ACC may change from time to time and that the interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to

any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

(f) **Right to Modify Specific Construction Provisions or Grant Variances.** The ACC shall have the authority to modify specific construction provisions or grant variances with respect to the requirements contained in this Article 3 or the Design Guidelines when circumstances such as topography, natural obstructions, Lot configuration, hardship or aesthetic or environmental considerations require. No modification or variance shall be effective unless in writing or shall serve to estop the ACC from denying a request for modification or variance in other circumstances. The inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a modification or a variance.

(g) **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 ACC shall constitute grounds for the imposition by the ACC or the Association of a fine against the Owner of said Lot not to exceed Five Hundred and No/100 Dollars (\$500.00). 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.

(h) **Limitation of Liability.** Review and approval of any submission or application pursuant to this Article 3 is made on the basis of aesthetic considerations and compliance with the Declaration and the Design Guidelines only, and not for engineering, structural design or quality of materials. Neither the Declarant, its officers, directors, partners, agents, employees, representatives, parent or subsidiaries, nor the Association, the Board, or the ACC, including any of its respective members, shall be liable to any Person for any official act of the ACC in connection with submitted plans and specifications. Notwithstanding any approval by the Declarant or the ACC, neither the Declarant, the Association nor the ACC shall be responsible or liable to any Person with respect to any loss, liability, claim or expense which may arise by reason of such approval or the construction of a Residence or Structure related thereto. Neither the Declarant, the Association, the Board nor the ACC shall be responsible in any way for any defects in any plans or specifications submitted, reviewed or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans or specifications. No approval of any plans by either the ACC or the Declarant shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation, it being the responsibility of the Person submitting any plans to assure compliance with all applicable laws. Conversely, the issuance of a building permit or any approval from any governmental authority shall not, under any circumstance, constitute any evidence that construction of a Residence or a Structure complies with the terms and conditions contained in this Declaration or the Design Guidelines. Declarant and members of the ACC shall have no liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious.

Section 3.4 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. 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"). The ACC, with the approval of the Board, or the Declarant shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location, installation, removal and maintenance of antennae. To the extent that reception of an acceptable quality signal would not be impaired, an antenna permissible pursuant to the rules of the Association or this Section may only be installed within the area of each Lot enclosed by a privacy fence, not visible from the Street, and integrated with the Residence and surrounding landscape. Due to the Association's obligation to repair, replace and maintain the roof on all Residences, and to preserve all applicable manufacturer's warranties, an Owner or Occupant shall be deemed not to have an exclusive or shared ownership interest in and to any aspect of the roofs on Residences and, therefore, shall not have an unfettered right to install antennae on the roof of any Residence. The cost to repair any damage to the roof caused by an Owner's or Occupant's installation of an antenna, whether unauthorized, authorized or required due to the inability to receive an acceptable quality signal elsewhere, 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. Similarly, any antenna attached to the exterior of a Residence, due to the inability to receive an acceptable quality signal for an installation in the area of a Lot enclosed by a privacy fence, shall cause the Owner to be liable for the cost to repair any damage to the exterior of the Residence as a Special Individual Assessment and shall relieve the Association of any maintenance or repair obligation for the affected area of the exterior of the Residence. Amateur radio towers and antennas (whether for reception or transmission) are specifically prohibited. Any exterior television, radio or other antenna not covered by the FCC Rules may only be installed, placed, allowed or maintained upon any Lot, Residence, or Structure with the prior written approval and authorization of the ACC.

(2) **Fences and Walls.** All fences and walls (excluding retaining walls described in (6) below) shall comply with the following requirements: (i) if installed by Declarant only, may be constructed of ornamental metal or other similar materials, and shall have a minimum height of at least four feet (4'); (ii) shall be six feet (6') in height (measured by the size or length of the picket) if constructed of wood or other approved materials; and (iii) shall comply with City requirements and be located in an area and constructed of materials in accordance with the provisions therefor contained in the Design Guidelines. No fence or wall may be constructed, repaired, rebuilt, or relocated if it impedes or obstructs drainage. Prior written approval from the ACC is required for any construction, placement or repair of fences or walls on any Lot.

(3) **Outbuildings.** Outbuildings or storage sheds are allowed upon a Lot but must receive prior written approval from the ACC. In addition to any further requirements for the construction, installation and location of outbuildings or storage sheds contained in the Design Guidelines, the following restrictions shall apply: (i) must be screened not just from Public View, but from view on all sides; (ii) maximum height allowed is six feet (6'0") but only so long as the outbuilding or storage shed is not visible above the fence line; and (iii) the location must be specifically approved in writing by the ACC. Any deviation from these restrictions not approved by the ACC will be just cause for the removal of the outbuilding or storage shed from the Lot.

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

(5) **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.

(6) **Retaining Walls.** Retaining walls, other than those constructed by the Declarant, require prior written approval by the ACC to ensure conformity with the requirements contained in the Design Guidelines with respect to location, construction, and materials. 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 ACC. 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 ACC. 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.

(7) **Mailboxes.** Mailboxes shall be of a design and constructed of materials approved by the ACC and shall conform to one of the standards depicted on Exhibit C, United States Postal Service regulations, and the Design Guidelines.

(8) **Signage.** Except for signs related to development or marketing by Declarant, 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 6 sq. ft., of tasteful design which advertise the Lot or Residence for sale or rent; (B) political signage placed on Lots, which shall be allowed so long as the Owner or Occupant of such Lot strictly complies with the conditions set forth in the Design Guidelines as to number, location, and time periods when such signs are allowed prior to the election and when such signs must be removed after the election; (C) spirit signs (announcing the involvement of teenagers in athletics or school programs), which shall only be allowed if provided for and in strict compliance with the Design Guidelines; 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 2 sq. ft. 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. All signs must be professionally produced and manufactured and shall be subject to written approval of the ACC.

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, Declarant or any Builder; (B) describe, malign or refer to the reputation, character or building practices of the Subdivision, Declarant; 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.

Each Owner hereby grants permission to the ACC (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 ACC'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.

(9) **Screening of Structures in Public View.** The Owners and Occupants of Lots at intersections of streets or where the rear yard is visible from Public View, who install any equipment or Structures incidental to Residences, including but without limitation, clothes drying equipment, yard equipment, lawn furniture, outbuildings, play equipment, gazebos, pool filtration or composting equipment and stored materials, shall be required to install screening structures as directed by the ACC. All screening structures or systems must receive written approval from the ACC prior to installation. The Owner's failure or refusal to install the necessary screening structure as required by the ACC will be grounds for the removal of the equipment or Structure by the Association or the ACC with the costs of removal being added to the Owner's assessment account as a Special Individual Assessment and secured by the lien created in Article 6 hereof.

(10) **Window Treatments.** Within a thirty (30) day period, commencing from the date title to a Lot with a Residence constructed thereon is transferred to a new Owner, no window on a Residence may be covered with foil or any 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. After the initial thirty (30) day period, only window treatments or coverings which are compatible in design and color with the Residence and the overall appearance of the Property will be allowed. The ACC shall have the sole authority to determine whether particular window treatments or coverings are compatible with the design and color of the Residence and the overall appearance of the Property.

(11) **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 3.5 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 ACC in accordance with the provisions therefor in the Design Guidelines as to aesthetic appearance and shall conform to any and all City ordinances.

(b) **Roof Materials.** Minimum twenty (20) 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 ACC approval.

Section 3.6 Height Restrictions. All Structures shall conform to the height restrictions of the City or as contained within this Declaration or the Design Guidelines.

Section 3.7 Roof Restrictions. All roofs shall have at least a 6:12 pitch on the main structure unless otherwise approved by the ACC. Only the Declarant or the Association, by and through the Board, shall have the right to cause repairs to take place on the roof or to undertake the replacement of all or part of the roof. Owners and occupants have no exclusive or limited rights of use in and to the roof and, accordingly, are absolutely prohibited from causing any type of roof installations.

Section 3.8 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 3.9 Landscaping. All Lots shall be appropriately landscaped, including planting of grass, plants and trees as determined by Declarant or in conformity with the Design Guidelines and other improvements on the Property. The front yard of each Lot shall be initially landscaped by Declarant 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 ACC. 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.

Section 3.10 Declarant Rights. So long as Declarant owns any Lot, Declarant may exercise any of the rights of the ACC under this Article 3.

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) yard drains; (vi) windows; (vii) light fixtures and light bulbs; (viii) landscape maintenance and replacement of the yard area within any fenced portion of a yard including rear yard grass, trees, shrubs, flowers and plants; (ix) sidewalks adjacent to Lot; (x) hose bibs; (xi) exterior electrical outlets; (xii) wood fences; (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. In the event an Owner fails or refuses to assign any and all warranties applicable to the foundation to the Association, the Owner shall be solely responsible for all repairs to the foundation. The obligation to repair, maintain and replace contained herein is more fully set forth on the Maintenance Policy (herein so-called) attached hereto as Exhibit D. The Maintenance Policy may be modified by the Board without amending this Section 4.1. Any conflict or ambiguity between the terms and conditions of the Maintenance Policy and the Declaration shall be resolved in favor of the Maintenance Policy.

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; and (v) 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 be solely responsible for the repair (but not the maintenance) of the foundation of the Residence but only

if any and all warranties pertaining to the foundation have been expressly assigned by the Owner to the Association. The obligation to repair, maintain and replace contained herein is more fully set forth in the Maintenance Policy (herein so-called) attached hereto as Exhibit D. The level and timing of maintenance to be undertaken by the Association will be determined by the Board and may also be set forth in the Maintenance Policy. The Maintenance Policy may be modified by the Board without amending this Section 4.2. Any conflict or ambiguity between the terms and conditions of the Maintenance Policy and the Declaration shall be resolved in favor of the Maintenance Policy. 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 generation 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 ½ 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 including the provisions of the Maintenance Policy. 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 non-profit 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 Articles of Incorporation (attached hereto as Exhibit E) and the By-Laws (attached hereto as Exhibit F). 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.

Section 5.2 Voting Power. The Association shall have two classes of voting membership as follows:

(a) **Class A.** The Class A Member shall be all Owners other than Declarant and shall be entitled to one vote for each Lot owned. 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) **Class B.** The Class B Member shall be the Declarant who shall be entitled to (10) votes for each Lot owned by Declarant. Subject to the conditions set forth in the remainder of this paragraph, the Class B membership shall be converted to Class A membership upon the earlier of (i) the total votes outstanding in the Class A membership equaling the total votes outstanding in the Class B membership, (ii) ten years following the filing of this Declaration with

the Office of the Collin County Clerk or (iii) the recording in the Records of **Collin** County, Texas of a notice signed by Declarant terminating the Class B membership. In determining the number of Lots owned by Declarant for the purpose of Class B membership status hereunder, the total number of Lots covered by this Declaration, including all Lots annexed thereto in accordance with Section 8.1 herein, shall be considered. In the event the Class B membership has previously lapsed as provided in (i) above, but annexation of additional property restores the ratio of Lots owned by Declarant to the number required for Class B membership status, such Class B membership shall be reinstated until it expires pursuant to the terms hereof.

(c) **Turnover Procedure**. Following the termination of the Class B membership status and Declarant's determination that it does not desire to annex additional property, Declarant shall cause control of the Association to be turned over to the general membership of the Association ("Turnover"). Within thirty (30) days of the termination of the Class B membership status, and Declarant's determination that it does not desire to annex additional property, 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 Class A 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 10.12.

(d) **Board of Directors Election**. The Board shall be elected as provided in the articles and 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 Act, 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 the Declaration, the Design Guidelines 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 Act 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 ACC, 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; (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

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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 percent (20%) 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 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, the Design Guidelines 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 shall be 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 Records of Collin 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, the Design Guidelines or ACC requirements 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 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 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 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, 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 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, provided that so long as the Class B membership provided for in Section 5.2(b) exists, any such annexation by Declarant may require the prior approval of HIM. Declarant may exercise such right by recording a supplement to this Declaration in the Records of Collin 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

the Covenants. Any document subjecting additional property to the Declaration may also impose additional restrictions not found in this Declaration upon such additional property. Upon the annexation and platting of any additional property as herein provided, each lot described therein shall become a "Lot" for all purposes hereunder.

Section 8.2 No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of Declarant or any Member 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.

Section 8.3 Effect of Annexation on Class B Membership. In determining the number of Lots owned by Declarant for the purpose of Class B membership status according to Section 5.2 hereof, 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 of Section 5.2.

Section 8.4 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 8.5 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 8.6 Assignment of Declarant Rights. Declarant may assign its rights to a successor Declarant hereunder by execution of a written document, recorded in Records of Collin 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 8.7 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 Collin 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. 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 8.8 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 8.8 shall expire at such time Declarant no longer owns a Lot.

Section 8.9 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 8.10 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 8.6, 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, 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 may be required to or should, at their option, 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 endorsement; and
- (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.

(c) **Liability.** Public liability insurance shall be secured by the Association with limits of liability of not less than one million dollars per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be necessary or desirable.

(d) **Policy Terms.** The Association shall make every reasonable effort to ensure that all policies purchased by the Association contain clauses, endorsements or agreements providing:

- (1) for waiver of subrogation;
- (2) that no policy may be canceled, invalidated, or suspended as a result of or on account of the conduct of any director, officer or employee of the Association or its duly authorized agent without prior demand in writing delivered to the Association to cure the default or defect caused by such conduct and the allowance of a reasonable time thereafter for the Association to effect such cure;
- (3) that the "other insurance" clause in any such policy excludes individual Owner's policies from consideration;
- (4) that no policy may be canceled or substantially modified without at least thirty (30) days prior written notice to the Association; and
- (5) for a deductible of no greater than \$5,000.00 per occurrence, unless a greater deductible per occurrence has been specifically approved by the Board of Directors.

(e) **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be charged to Owners as part of the Maintenance Assessments described in Article 6 above.

(f) **Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no mortgagee having an interest in such losses shall be prohibited from participating in the settlement negotiations, if any, related thereto. Upon the payment of proceeds to the Association under any policy, the sole duty of the Association, as insurance trustee, shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein and for the benefit of the Owners and their mortgagees in the following shares:

- (1) Proceeds on account of damage to the Common Area and facilities held for the Association.
- (2) Proceeds on account of damage to Lots shall be held in undivided shares for the Owners of such damaged Lots in proportion to the cost of repairing damage suffered by each Owner, which cost shall be determined by the Board.
- (3) In the event a mortgagee or lender loss payable endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owners as their interests may appear.

Section 9.2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

therefor. (a) **Expense of the Trust.** All expenses of insurance trustees shall be first paid or provisions made

(b) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost incurred by the Association of performing or obtaining the performance of the repairs, reconstruction or replacement of damaged improvement(s) or other property, excluding interior finish-out of a Residence and replacement of fixtures and personal property of the Owner, and the Association shall ensure that all mechanic's liens, materialman's liens or other such liens which may result from such reconstruction, replacement or repair work are waived, satisfied or otherwise removed. Any proceeds remaining after defraying such costs shall be distributed as provided in Section 9.1(f).

In the event that the proceeds are insufficient to fully restore, repair or replace the loss or damage, the Association may levy Special Assessment to cover the deficiency.

Section 9.3 Owner's Responsibility for Insurance. The Association does not insure an Owner or any Occupant's personal property, including interior finish-out and fixtures. Each Owner and Occupant is responsible for insuring his or her personal property and interior finish-out, including without limitation, furnishings, fixtures, vehicles and stored items. Notwithstanding the foregoing, the Board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually purchased and maintained by Owners as deemed necessary or desirable by the Board, to reduce potential risks to the Association or other Owners. The Board may demand production from an Owner of whatever documentation it deems necessary to verify that Owner has fulfilled its obligation as created herein. If an Owner fails to purchase and maintain insurance as required by the Board, the Board may obtain such coverage on behalf of the Owner who will be obligated for the cost thereof as a Special Individual Assessment which shall be secured by the lien created in Article 6 hereof.

ARTICLE 10 MISCELLANEOUS PROVISIONS

Section 10.1 Term and Renewal. These Covenants shall commence on the date hereof and shall continue in effect for a period of thirty (30) years. Thereafter these Covenants shall automatically renew for subsequent periods of ten (10) years each unless Owners owning at least seventy-five percent (75%) of the Lots elect to terminate these Covenants by written instrument recorded in the Records of Collin County, Texas.

Section 10.2 Enforcement. The terms, provisions and conditions of this Declaration and the Design Guidelines shall be enforceable by Declarant, the ACC, the Association, and each Owner. The Board shall have the power and authority to impose reasonable fines (which shall not exceed \$500.00 for each individual fine) for violation of this Declaration, the Design Guidelines or any rule or regulation of the Association, which shall constitute a lien upon the Lot of the violating Owner as provided in the Declaration, and to suspend the Owner's right to vote or any Person's right to use of the Common Area. Each day the violation continues to exist shall constitute a separate violation. If any Occupant, guest, or invitee of a Lot violates the Declaration, the Design Guidelines or a rule or regulation of the Association and a fine is imposed, the fine shall first be assessed against such Occupant, guest, or invitee; provided, however, if such Occupant, guest, or invitee does not pay the fine within thirty (30) days after written demand for payment from the Association, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, the Design Guidelines or any rule or regulation of the Association shall not operate as a waiver of the right of the Board to do so thereafter.

Section 10.3 Easement for Encroachments, Access, Maintenance and Utilities. Each Owner grants to the Association, the Board, the Declarant and the other Owners a general easement for the maintenance of any minor encroachments of Common Area facilities over adjoining Lots and for access to and from each Owner's Lot through driveways, rights of way and easements as reflected on the Plat for the purpose of giving effect to the provisions of these Covenants.

Section 10.4 Amendment of Declaration. These Covenants may be amended by Declarant as provided in Section 8.4. In addition, the Declaration may be amended at any time and in any respect with the approval of Owners owning at least seventy percent (70%) of the Lots; provided, however, that no such amendment shall be effective unless joined in by Declarant until such time as Declarant no longer owns a Lot. In addition, so long as the Class B membership provided for in Section 5.2(b) exists, any amendment of these Covenants may, at Declarant's discretion, require the prior approval of HUD.

Section 10.5 City Provisions. All construction within the Property shall also comply with all applicable City ordinances and regulations. If any ordinance or regulation imposed by the City imposes more demanding, extensive or

restrictive requirements than those set forth in this Declaration, such requirements shall govern. No ordinance or regulations adopted by the City shall lessen the requirements set forth in these Covenants.

Section 10.6 HUD Approval. Should any approval from HUD be required under the terms of this Declaration, Declarant shall forward such request for approval to HUD. If HUD does not notify Declarant of any objection to the request for approval within twenty (20) days of the date such request for approval was forwarded to HUD, then such approval shall be deemed to have been granted.

Section 10.7 Notices. Any notice required to be given to any Owner under the terms of this Declaration shall be deemed to have been properly delivered when deposited with the United States Postal Service, postage prepaid, properly addressed to the addressee. Each Lot Owner's address for purpose of notice hereunder shall be deemed to be the Residence located on its Lot.

Section 10.8 Indemnification. Neither the Declarant, including any of its officers, directors, employees or agents, nor any officer, director or agent of the Association, nor any Member of the ACC shall be liable to any Person, Owner or any person claiming by or through any Owner or otherwise for any act or omission in the performance of the duties of such Declarant or officer, director or agent of the Association, or member of the ACC except only if such act or omission should be judicially declared to constitute fraud or intentional willful misconduct. The Association shall and does hereby agree to indemnify and hold harmless the Declarant, including any of its officers, directors, agents or employees, the officers, directors and agents of the Association, and the members of the ACC against all claims, demands, actions and proceedings and all expenses in connection therewith arising from the good faith exercise of their duties pursuant to this Declaration.

Section 10.9 Severability. If any of the terms hereof or any supplement or amendment hereto is found to be invalid by a court of competent jurisdiction, then such invalidity shall not affect the other provisions of these Covenants, which shall be in full force and effect and shall be interpreted to be as restrictive as possible to preserve as much of the original provisions as allowed by law.

Section 10.10 Acceptance by Owners of Rights and Obligations. By the recording of a deed or other conveyance transferring all or part of an interest in a Lot subject to this Declaration, the person or entity to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all the provisions of the Declaration, the Design Guidelines, the articles and bylaws of the Association, including any rules or regulations adopted or promulgated by the Association, whether or not mention thereof is made in said deed.

Section 10.11 Disclosure by Declarant. Attached hereto as Exhibit G-1 are summaries of certain disclosures made to all purchasers of a Residence from Declarant and/or Builder(s), who, having made such disclosures to such purchasers of a Residence and having attached such summaries to this Declaration, shall be deemed to have fully made such disclosures to any Person acquiring title to any Lot and is hereby fully released and forever discharged by any Owner of a Lot from any further duty or obligation to make such disclosures.

Section 10.12 Arbitration of Disputes Involving Declarant.

(a) ANY AND ALL DISPUTES ARISING HEREUNDER BETWEEN AN OWNER AND DECLARANT, SHALL BE SUBMITTED TO BINDING ARBITRATION AND NOT TO A COURT FOR DETERMINATION. ARBITRATION SHALL COMMENCE AFTER WRITTEN NOTICE IS GIVEN FROM EITHER PARTY TO THE OTHER, SUCH ARBITRATION SHALL BE ACCOMPLISHED EXPEDITIOUSLY IN DALLAS COUNTY AND SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THE ARBITRATION SHALL BE CONDUCTED BY THREE (3) ARBITRATORS, ONE OF WHOM SHALL BE APPOINTED BY THE OWNER AND ONE OF WHOM SHALL BE APPOINTED BY DECLARANT. THE THIRD ARBITRATOR SHALL BE APPOINTED BY THE FIRST TWO ARBITRATORS. THE ARBITRATORS SHALL BE SELECTED FROM A LIST OF ARBITRATORS SUBMITTED BY THE AAA. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. ARBITRATION SHALL NOT COMMENCE UNTIL THE PARTY REQUESTING IT HAS DEPOSITED ONE THOUSAND FIVE HUNDRED AND NO/100 U. S. DOLLARS (\$1,500.00) WITH THE ARBITRATORS AS A RETAINER FOR THE ARBITRATORS' FEES AND COSTS. THE PARTY REQUESTING ARBITRATION SHALL ADVANCE SUCH SUMS AS ARE REQUIRED FROM TIME TO TIME BY THE ARBITRATORS TO PAY THE ARBITRATORS' FEES AND COSTS, UNTIL THE PREVAILING PARTY IS DETERMINED OR THE PARTIES HAVE AGREED IN WRITING TO AN ALTERNATIVE ALLOCATION OF FEES AND COSTS. EACH PARTY SHALL PAY HIS/HER OWN LEGAL FEES AND COSTS AND ANY OTHER FEES INCURRED IN CONNECTION WITH AN ARBITRATION PROCEEDING WHICH ARISES OUT OF OR RELATES IN ANY WAY TO THIS AGREEMENT. PROVIDED, HOWEVER, THAT THE ARBITRATION PANEL SHALL AWARD THE ARBITRATORS' FEES AND COSTS TO THE PREVAILING PARTY IN ITS ARBITRATION JUDGMENT.

Section 10.13 Notice of Sale, Lease or Acquisition. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, within thirty (30) days of the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require. This requirement also applies to all Persons acquiring title to a Lot at a foreclosure sale.

Section 10.14 Occupants Bound. All provisions of the Declaration, the Design Guidelines and of any rules promulgated by the Board which govern the conduct of Owners within the Property and provide for sanctions against Owners shall also apply to all tenants, Occupants, guests and invitees of any Lot. Any lease on any Lot shall be deemed to provide that the tenant and all Occupants of the leased Lot shall be bound by the terms of this Declaration, the Design Guidelines, the Bylaws and the rules of the Association. An Owner is responsible for providing the tenant with a copy of this Declaration and all other documents pertaining to the Association, and for notifying the tenant of any changes thereto. Failure by the tenant or his invitees to comply with the Declaration, any rule or regulation of the Association or applicable law is deemed to be a default under the lease. When the Association notifies an Owner of the tenant's violation, the Owner will promptly obtain the tenant's compliance or exercise the rights as a landlord for tenant's breach of the lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling or unavailable to obtain the tenant's compliance, then the Association shall have the power and right to pursue remedies of a landlord under the lease or state law for default under the terms of the lease, including eviction of the tenant. The Owner of a Residence which is leased shall be liable to the Association for any expenses incurred by the Association in connection with the enforcement of this Declaration or any rules and regulations of the Association against the tenant. The Association does not assume any duties as a "landlord" under the lease or state law, and is not liable to Owner for any damages, including lost rents, suffered by Owner in relation to the Association's enforcement efforts against Owner's tenant.

Section 10.15 Homestead. By acceptance of a deed thereto, the Owner and spouse thereof, if married, of each Lot shall be deemed to have waived any exemption from liens created by this Declaration or the enforcement thereof by foreclosure or otherwise, which may otherwise have been available for reason of the homestead exemption provisions of Texas law, if for any reason such are applicable. This section is not intended to limit or restrict in any way the lien or rights granted to the Association by this Declaration, but to be construed in its favor.

Section 10.16 Soil Movement. Each Owner acknowledges that the failure or excessive movement of any foundation of any Residence can result in the diminished value and overall desirability of the entire Property. 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 Residence in the Property. Each Owner also acknowledges that the long term value and desirability of the Property is contingent upon each Owner maintaining its Residence so that no structural failure or excessive soil movement occurs within the Property.

EACH OWNER IS HEREBY NOTIFIED THAT THE SOIL COMPOSITION IN NORTH TEXAS IN GENERAL AND THE PROPERTY IN PARTICULAR AND THE CONDITION 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 and structural failure may occur. Owners are highly encouraged to install and maintain proper irrigation around their Residence or take such other measures to ensure even, proportional, and prudent watering around the foundation of the Residence.

By each Owner's acceptance of a deed to any Lot, each Owner, on behalf of Owner and Owner's representatives, successors and assigns, hereby acknowledges that Declarant and all Builders shall not be responsible or liable for, and Owner shall assume all risk and consequences of, any damage, settlement, movement or upheaval to the foundation, structural failure, or any damage to any other part of the Residence caused by Owner's failure to exercise proper care and maintenance of the soil required to prevent soil movement, and hereby releases and forever discharges, all Builders 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 causes of actions, liabilities, damages and claims whatsoever, known or unknown, direct or indirect, arising from or relating to Owner's failure to exercise proper care and maintenance of the soil required to prevent soil movement, including but not limited to, any damage caused by or related in any fashion to the failure or improper or uneven watering of the Lot, planting or improper vegetation near the foundation, or any action by any Owner that affects the drainage of any Lot.

Executed by Declarant as of the date set forth above.

LEGACY/MONTEREY HOMES, L.P.,
an Arizona limited partnership

By: MTH-TEXAS GP, INC.,
an Arizona corporation,
General Partner

By: Michael S. Gavin, Vice President

STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, personally appeared Michael S. Gavin, Vice President of MTH-Texas GP, Inc., an Arizona corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18th day of Oct, 2004.



Amy C. Kirkpatrick
Notary Public in and for the State of Texas