

**AFTER RECORDING, RETURN TO:**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS  
AND RESTRICTIONS  
FOR  
CREEKBEND TOWNHOMES  
DALLAS COUNTY, TEXAS**

*This Amended and Restated Declaration of Covenants, Conditions and Restrictions may be used only in connection with the residential community known as Creekbend in the City of Dallas, Dallas County, Texas and the operation of Creekbend Homeowner's Association, Inc.*

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CREEKBEND TOWNHOMES**

**NOTICE TO PURCHASER: CREEKBEND TOWNHOMES IS A DEED RESTRICTED COMMUNITY. THIS DOCUMENT AFFECTS YOUR RIGHT TO USE THE PROPERTY YOU ARE PURCHASING. BY PURCHASING PROPERTY IN CREEKBEND, YOU ARE BOUND BY ALL OF THE TERMS OF THIS DOCUMENT, INCLUDING AMENDMENTS, RULES, POLICIES, RESOLUTIONS, ARCHITECTURAL/DESIGN GUIDELINES, NOW OR HEREAFTER ADOPTED.**

STATE OF TEXAS            §  
  §            KNOW BY ALL THESE PRESENT:  
COUNTY OF DALLAS       §

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Creekbend Townhomes (the “**Declaration**”) is made effective upon approval and affirmative vote by the Owners of Creekbend Homeowner’s Association, Inc., a Texas nonprofit corporation, and is as follows:

**RECITALS:**

**WHEREAS**, Sumner & Greener, a Texas General Partnership, prepared, executed, and declared an instrument entitled Declaration of Covenants, Conditions and Restrictions for Creekbend Townhomes dated November 16, 1982, and recorded in Volume 82227, Page 0652 in the Official Public Records of Dallas County, Texas (the "**Original Declaration**"); and

**WHEREAS**, the Original Declaration was supplemented by those certain Supplemental Declarations of Annexation and Merger for Creekbend Townhomes, one of which is dated January 18, 1983, and recorded in Volume 83016, Page 2292 in the Official Public Records of Dallas County, Texas, and the other dated August 26, 1983, and recorded in Volume 83170, Page 0478 in the Official Public Records of Dallas County, Texas; and

**WHEREAS**, the Original Declaration was amended by virtue of the First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Creekbend Townhomes filed on February 6, 1986 as Instrument No. 198600252644 of the Official Public Records of Dallas County, Texas (the "**First Amended and Restated Declaration to the Original Declaration**"); and

**WHEREAS**, the Association desires to provide for the preservation, administration, and maintenance of portions of Creekbend, and to protect the value, desirability, and attractiveness of Creekbend. As an integral part of the development plan, the creation of a property owners association to perform these functions and activities more fully described in this Declaration and the other government documents described below; and

**WHEREAS**, the Owners of the Lots located within Creekbend desire to amend the Original Declaration and First Amended and Restated Declaration to the Original Declaration upon the filing of an instrument in the Official Public Records of Dallas County, Texas, agreeing to this "**Declaration**".

**NOW, THEREFORE**, it is hereby declared: (i) that the Property will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; and (ii) that each contract or deed conveying the Property (or any portion thereof) will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

## **ARTICLE 1 DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

**“Applicable Law”** means the statutes and public laws and ordinances in effect at the time a provision of the Restrictions is applied, and pertaining to the subject matter of the Restriction provision, including but not limited to, all ordinances and any other applicable building codes, zoning restrictions and permits or other applicable regulations. Statutes and ordinances specifically referenced in the Restrictions are “Applicable Law” on the date of the Restrictions, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

**“Architectural Control Committee”** or **“ACC”** means the committee created pursuant to this Declaration to review and approve or deny plans for the construction, placement, modification, alteration or remodeling of any Improvements on a Lot, Structure, or Townhome.

**“Area of Common Responsibility”** means those portions of a Townhome that are designated, from time to time, by this Declaration or the Association to be maintained, repaired, and replaced by the Association, as a Common Expense, as reflected in the Designation of Area of Common Responsibility and Maintenance Chart attached to this Declaration as Exhibit “B”.

**“Articles”** means the Articles of Incorporation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

**“Assessment”** or **“Assessments”** means assessments imposed by the Association under this Declaration.

**“Association”** means **CREEKBEND HOMEOWNER’S ASSOCIATION, INC.**, a Texas nonprofit corporation, which has been created to exercise the authority and assume the powers specified in this Declaration. The failure of the Association to maintain its corporate charter, from time to time, does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration, the Articles, the Bylaws, and Applicable Law.

**“Board”** means the Board of Directors of the Association.

**“Bulk Rate Contract” or “Bulk Rate Contracts”** means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, “broadband” services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial to all or a portion of the Property or the Common Area.

**“Bylaws”** means the Bylaws of the Association as adopted and as amended from time to time.

**“City of Dallas”** means the City of Dallas, Dallas County, Texas.

**“Common Area”** means any property and facilities that the Association owns or in which it otherwise holds rights or obligations for the benefit of the Association or its Members. Some Common Area will be solely for the common use and enjoyment of the Owners, Residents, and their guests, tenants and invitees, while other portions of the Common Area may be for the use and enjoyment of the Owners, Residents, their guests, tenants, and invitees. By way of example, and not by way of limitation, Common Area may include any entry features, pool or amenity center or clubhouse, signage, landscape easements, recreational facilities, trails, playground equipment, and/or other similar items.

**“Limited Common Area”** means portions of the Common Area which are set aside and reserved for the exclusive use of the Owner of the Townhome, *e.g.*, automobile parking space(s). Such Limited Common Area shall be used in connection with the assigned Townhome, to the exclusion of the use thereof by other Owners, except by invitation.

**“Common Expenses”** means all costs and expenses, reserves or financial liabilities of the Association that are incurred pursuant to the provisions of this Declaration, the Bylaws or resolution duly adopted by the Board.

**“Community Systems”** means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by the Association within the Property.

**“Design Guidelines”** means the standards for design, construction, landscaping, and exterior items proposed to be placed on any Lot.

**“Improvement”** means all physical enhancements and alterations to the Property, including but not limited to grading, clearing, removal of trees, and site work, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, alteration of drainage flow, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

**“Law-Based Sections”** shall refer to those sections in Exhibit C and address referenced State law relating to an Owner's use of his/her Lot. The Law-Based Sections are to be liberally construed to give effect to the purposes and intent of the underlying statutes. The Association must remain mindful that certain actions are controlled by State law, that State law is subject to change, that State law should be consulted for applicability whenever enforcement issues arise, and that the Law-Based Sections should not be changed or terminated without advice of legal counsel regarding applicable law then in effect. Due to changes in State law, the Law-Based Sections may be amended by the Board without vote of the Owners.

**“Lot”** means any portion of the Property designated or as shown as a subdivided Lot on a Plat other than Common Area. Lot shall refer to those one hundred twelve (112) individual tracts or parcels of land within the existing Property, as shown in the Original Declaration dated November 16, 1982, and Supplemental Declaration dated August 26, 1983.

**“Majority”** means more than half.

**“Manager”** has the meaning set forth in *Section 4.05(h)*.

**“Members”** means every person or entity that holds membership privileges in the Association.

**“Mortgage”** or **“Mortgages”** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.

**“Mortgagee”** or **“Mortgagees”** means the holder(s) of any Mortgage(s).

**“Owner”** means the person(s) or entity or entities holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.

**“Plat”** means a Recorded subdivision plat of the Property and any amendments thereto.

**“Property”** means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Creekbend Townhomes, a subdivision in Dallas County, Texas, according to the plat Recorded in the Plat or Map Records of Dallas County, Texas. The Property includes the land described in Exhibit A.

**“Record, Recordation, Recorded, and Recording”** means recorded or to be recorded in the Official Public Records of Dallas County, Texas.

**“Resident”** means an occupant or tenant of a Lot, regardless of whether the person owns the Lot.

**“Restrictions”** means the restrictions, covenants, and conditions contained in this Declaration, the Design Guidelines, Bylaws, Rules and Regulations, or in any other policies promulgated by the Board pursuant to this Declaration, as adopted and amended from time to time. *See, Table 1* for a summary of the Restrictions.

**“Rules and Regulations”** means any instrument, however denominated, which is adopted by the Board for the regulation and management of the Property or the Common Area, including any amendments to those instruments.

**“Structure”** means a building containing two (2) or more Townhomes that: (i) is located on two (2) or more adjacent Lots; and (ii) has one (1) or more party walls separating the Townhomes comprising such building.

**“Townhome”** means the entire enclosed area of any single-family residential structure. Each Townhome includes the space and improvements contained within the exterior walls of any such single-family residential structure; including, without limitation, all windows, window screens and frames; exterior doors, door frames and hardware; garage space; private passageways, if any. Each Townhome also includes all improvements, fixtures and equipment serving the Townhome exclusively whether located inside or outside the Townhome or whether attached to or contiguous with the Townhome, such as, for example, the following: air conditioning or heating units; utility meters; fuse boxes; wiring; pipes; conduits; lighting fixtures; receptacles for telephone or television service; and any skylights. On party walls (being the walls dividing two Townhomes) the Townhome’s lateral boundary shall constitute the imaginary plane defining the midpoint of such party wall.

**TABLE 1: RESTRICTIONS**

<b>Declaration</b> (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property.
<b>Articles of Incorporation</b> (Recorded)	Establishes the Association as a Texas nonprofit corporation.
<b>Bylaws</b> (Recorded)	Governs the Association’s internal affairs, such as elections, meetings, etc.
<b>Design Guidelines</b> (if adopted, Recorded)	Governs the design and architectural standards for the construction of Improvements and modifications thereto.
<b>Rules and Regulations</b> (if adopted, Recorded)	Regulates the use of property, activities, and conduct within the Property or the Common Area.
<b>Board Resolutions</b> (adopted by the Board of the Association)	Establishes rules, policies, and procedures for the Property, Owners, and the Association.

**ARTICLE 2  
GENERAL AND USE RESTRICTIONS**

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

**2.01 General.**

(a) Conditions and Restrictions. All Lots within the Property will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the Restrictions.

**NOTICE**

**The Restrictions are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with the Restrictions, as they may change from time to time.**

(b) Ordinances. Ordinances and requirements imposed by local governmental authorities are applicable to all Lots within the Property. Compliance with the Restrictions is not a substitute for compliance with Applicable Law. Please be advised that the Restrictions do not purport to list or describe each restriction or ordinance or regulation which may be applicable to a Lot located within the Property. Each Owner is advised to review all ordinances, requirements, regulations and encumbrances affecting the use and improvement of their Lot prior to submitting plans to the ACC for approval. Furthermore, approval by the ACC should not be construed by the Owner that any Improvement complies with the terms and provisions of any ordinances, requirements, regulations, or encumbrances which may affect the Owner's Lot. Certain encumbrances may benefit parties whose interests are not addressed by the ACC.

**2.02 Conceptual Plans.**

**2.03 Single-Family Residential Use.** The Lots shall be used solely for private, single family residential purposes. For purposes of this Declaration, the phrase "*residential purposes*" is intended to prohibit short-term rentals of or transient stays at a Townhome, *i.e.*, any term less than six (6) months.

No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of a Lot, except an Owner or Resident may conduct business activities within a Townhome so long as: (i) such activity complies with Applicable Law; (ii) participation in the business activity is limited to the Owner(s) or Resident(s) of a residence; (iii) the existence or operation of the business activity is not apparent or detectable by sight, *i.e.*, no sign may be erected advertising the business within the Property, sound, or smell from outside the residence; (iv) the business activity does not involve door-to-door solicitation of residents within the Property; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents within the Property as may be determined in the sole discretion of the Board; and (vii) the business

does not require the installation of any machinery other than that customary to normal household operations. In addition, for the purpose of obtaining any business or commercial license, neither the Townhome nor Lot will be considered open to the public. The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

Leasing of a Townhome shall not be considered a business or trade within the meaning of this subsection.

**2.04 Rentals.** Nothing in this Declaration will prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided that: (i) all rentals must be for terms of at least six (6) months; and (ii) no portion of a Lot (other than the entire Lot) may be rented. All leases shall be in writing. Notice of any lease, together with such additional information as may be required by the Board, will be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. Each lease must provide, or be deemed to provide, that the Board shall have the right to terminate the lease upon default by the tenant in observing any provisions of the Restrictions. Regardless of whether or not expressed in the applicable lease, all Owners shall be jointly and severally liable with the tenants of such Lot to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for any injury or damage to property caused by the negligence of the tenant of such Lot or for the acts or omissions of the tenant(s) of such Lot which constitute a violation of, or non-compliance with, the provisions of the Documents. All leases shall comply with and be subject to the provisions of the Restrictions and the provisions of same shall be deemed expressly incorporated into any lease of a Lot. The Board may adopt and enforce reasonable rules regulating leasing.

**2.05 Subdividing.** No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof.

**2.06 Hazardous Activities.** No activities may be conducted on or within the Property and no Improvements may be constructed on any portion of the Property which, in the opinion of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Property unless discharged in conjunction with an event approved in advance by the Board and no open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

**2.07 Insurance Rates.** Nothing shall be done or kept on the Property which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Common Area, or the Improvements located thereon, without the prior written approval of the Board.



**2.08 Mining and Drilling.** No portion of the Property or the Common Area may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. No representation or warranty, express or implied, is made as to the ownership of the minerals, resources and groundwater or any portion thereof or any interest therein.

**2.09 Noise.** No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any portion of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its Residents. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

**2.10 Clotheslines; Window Air Conditioners.** Clotheslines and outdoor clothes drying or hanging shall be permitted within the Property so long as the line or clothes are not higher than the fence. Nothing shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Townhome, and no awnings, canopies or shutters shall be affixed or placed upon the exterior walls or roofs of Townhomes, or any part thereof, nor relocated or extended, without the prior written consent of the ACC. Window air conditioners are prohibited.

**2.11 Animals - Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Property (as used in this paragraph, the term “domestic household pet” shall not mean or include non-traditional pets such pot-bellied pigs, miniature horses, goats, exotic snakes or lizards, monkeys, chickens or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than within the Owner’s residence, or the fenced yard space associated therewith, unless confined to a leash. The Association may restrict pets to certain areas on the Property. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches, or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed, and vaccinated as required by Applicable Law. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Property.

**2.12 Rubbish and Debris.** No rubbish or debris of any kind may be placed or permitted to accumulate on or within the Property, and no odors will be permitted to arise therefrom so as to

render all or any portion of the Property unsanitary, unsightly, offensive, or detrimental to any other property or Residents. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

**2.13 Trash Containers.** Trash containers and recycling bins must be stored in one of the following locations:

- (a) inside the garage of the single-family residence constructed on the Lot; or
- (b) behind the single-family residence.

The Board shall have the right to specify additional locations on each Owner's Lot in which trash containers or recycling bins must be stored.

**2.14 Antennae.** Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, shall be erected, maintained, or placed on a Lot without the prior written approval of the ACC; provided, however, that:

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- (ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less (3 feet or less) in diameter or diagonal measurement; or
- (iii) an antenna that is designed to receive television or radio broadcast signals;

(collectively, (i) through (iii) are referred to herein as the “**Permitted Antennas**”) will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the ACC, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Property.

**Except as expressly provided herein, no exterior radio or television antennae or aerial or satellite dish or disc, shall be erected, maintained, or placed on a Lot without the prior written approval of the ACC.**

**2.15 Location of Permitted Antennae.** A Permitted Antenna may be installed solely on the Owner's Lot and shall not encroach upon any street, Common Area, or any other portion of the Property. A Permitted Antenna shall be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Property, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the ACC are as follows:

- (i) Attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then
- (ii) Attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The ACC may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

**2.16 Temporary Structures.** No tent, shack, or other temporary building, or Improvement, or structure shall be placed upon the Property; provided, however, that temporary structures necessary for storage of tools and equipment, during actual renovation, construction or other labor services provided to the Townhome may be maintained with the prior approval of the Association, approval to include the nature, size, duration, and location of such structure.

**2.17 Unsightly Articles; Vehicles.** No article deemed to be unsightly by the Board shall be permitted to remain on any Lot so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles, and garden and lawn maintenance equipment shall be kept, at all times, except when in actual use, in garages and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any street, driveway, or roadway within the Property or the Common Area.

Parking of commercial vehicles or equipment, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than in enclosed garages is prohibited; provided, construction, service and delivery vehicles may be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a residence.

Mobile homes are prohibited.

**2.18 Parking and Storage Area.** No parking space on the Property shall, without express permission of the Board, be used for the storage of boats, trailers, campers, non-passenger

vehicles, inoperable vehicles, or any other items which the Board, in its discretion, deems unsightly or inappropriate. Space for storage of large items of personal property will be provided by the Association as part of the Common Area facilities and will be available at a reasonable cost. If such space is not available, the Association shall make rules and regulations for the storage of these items as it deems necessary and in the best interest of all Owners.

**2.19 Holiday Decorations.** No decorative appurtenances such as sculptures, birdbaths and birdhouses, fountains, or other decorative embellishments shall be placed on the Townhome or on any other portion of a Lot which is visible from any street, unless such specific items have been approved in writing by the ACC. Customary seasonal decorations for holidays are permitted without approval but shall be removed within thirty (30) days of the applicable holiday.

**2.20 Compliance with Restrictions.** Each Owner, his or her family, Residents of a Townhome, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of the Restrictions and may result in a fine against the Owner, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Board on behalf of the Association, the ACC, or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied shall be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). **Each such Owner shall release and hold harmless the Association and its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 2.26 (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.**

**2.21 Liability of Owners for Damage to Common Area.** No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Area of Common Responsibility or Common Area without the prior written approval of the Board. Each Owner shall be liable to the Association for any and all damages to: (i) the Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, including but not limited to the Area of Common Responsibility, which damages were caused by the neglect, misuse or negligence of such Owner or Owner's family, or by any tenant or other Resident of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be levied as an Individual Assessment

against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided in this Declaration.

**2.22 Party Walls.** A wall located on or near the dividing line between two (2) Lots or Townhomes constructed upon such Lots and intended to benefit both Lots constitutes a "Party Wall" and, to the extent not inconsistent with the provisions of this *Section 2.28*, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

(a) Encroachments & Easement. If the Party Wall is on one Lot due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this *Section 2.28*. 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 Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall.

(b) Right to Repair. If the Party Wall is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall.

(c) Maintenance Costs. The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Public Records of Dallas County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this Section is appurtenant to the Lot and passes to the Owner's successors in title.

(d) Alterations. The Owner of a Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the adjoining Lot or residence. The Party Wall will always remain in the same location as when erected unless otherwise approved by the Owner of each Lot sharing the Party Wall and the ACC.

(e) Speakers. Speakers are prohibited from being installed in any Party Wall.

**2.23 Injury to Person or Property.** The Association nor their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Resident or their guests: (a) to supervise minor children or any other person; (b) to fence or otherwise enclose any Lot or Common Area; or (c) to provide security or protection to any Owner, Resident, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Lot, each Owner agrees that the limitations set forth in this Section are reasonable and constitute the exercise

of ordinary care by the Association. **EACH OWNER AGREES TO RELEASE AND HOLD HARMLESS THE ASSOCIATION'S AGENTS FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE PROPERTY TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER, HIS TENANT, HIS GUESTS, EMPLOYEES, CONTRACTORS, OR INVITEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.**

**2.24 View Impairment.** The Association does not guarantee or represent that any view over and across the Lots, or any open space or Common Area within the Property will be preserved without impairment. Neither the ACC nor the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

**2.25 Safety and Security.** Each Owner and Resident of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property or the Common Area. The Association may, but shall not be obligated to, maintain or support certain activities within the Property or the Common Area designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Association shall not in any way be considered insurers or guarantors of safety or security within the Property or the Common Area, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Property or the Common Area, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Residents of such Owner's Lot that the Association and its Board and committees are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to property, including any residences or Improvements constructed upon any Lot and the contents thereof, resulting from acts of third parties.

**2.26 No Warranty of Enforceability.** The Association makes no warranty or representation as to the present or future validity or enforceability of any Restrictions. Any Owner acquiring a Lot in reliance on the Restrictions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold the Association harmless therefrom.

**2.27 Dirt Disclosure.** This representation is made that any Lot or Common Area in the Subdivision is on native virgin soil or that the soil has a particular nutritional value for plants. This disclosure is made to give inquiry notice to prospective Owners, who may make their own determinations about the composition and nutrients of the material on and beneath the surface of any lot in the Property. Additionally, the Townhomes and other improvements in the Subdivision are built on ground that may be composed partly or wholly of expansive clay soils, which are prone

to expand and contract in response to wetness and drought if the Owner does not properly maintain the soil to prevent soil movement. Cycles of shrinkage and swelling may put stress on structures, resulting in property damage and diminished property values. Each Owner is responsible for preserving the structural integrity of the home and other improvements on the lot by maintaining the moisture content of the Lot's soil to reduce the potential for soil movement that may result in damage to improvements. **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 Townhome or take such other measures to ensure even, proportional, and prudent watering around the foundation of the Townhome.

**2.28 Solid Waste Composting of Vegetation.** Solid waste composting systems of vegetation, including grass clippings, leaves or brush (a "*Composting System*") may be installed. Composting of any other material is strictly prohibited, including, but not limited to, manure, meat, fish, carcasses, dairy materials, oils, greases, sewage, sludge, diapers, and paper sludges.

- (a) Composting Systems may only be located in the fenced rear-yard or patio and shall not be taller than the fence line;
- (b) Composting Systems must be properly maintained at all times, including regular cleaning, and must be enclosed or covered at all times;
- (c) Composting Systems which become unsightly or could serve as a breeding ground for mosquitoes or other insects must be removed by the Owner; and
- (d) Composting Systems are prohibited if a Court determines that the installation thereof violates any law or threatens the public health or safety.

### **ARTICLE 3 DISCLOSURES**

This Article discloses selective features of the Property or the Common Area that may not be obvious to potential Owners and Residents. Because features may change over time, no disclosure in this Article should be relied upon without independent confirmation.

**3.01 Service Contracts.** The Association may have contracted, on behalf of the Owner, for one or more services to be provided by vendors to the Townhomes on a contract basis, such as intrusion monitoring and cable television. In that event, whether or not an Owner chooses to use the service, the Owner is required its share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Regular

Assessments or Individual Assessments. However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.

**3.02 Adjacent Thoroughfares.** The Property is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

**3.03 Fire Sprinkler Disclosure.** The Structures may be constructed with a fire sprinkler system. If sprinklers are present, water lines and sprinkler heads may be in the ceilings above rooms in the Townhome. This disclosure is given because damage to, or a malfunction of, a water line or sprinkler head may harm or destroy real and personal property. Each Owner is solely responsible for all of the following:

- (i) determining the location and proper care of the sprinkler equipment, water lines and sprinkler heads in the Townhome;
- (ii) preserving the integrity and functionality of the portion of the fire sprinkler system in their Townhome;
- (iii) instructing each Resident, invitees and contractors about the care and protection of the sprinkler system, including any applicable rules adopted by the Board;
- (iv) any damage to their Townhome, an adjoining Townhome, Common Area, and/or any personal property (such as furnishings and clothing) caused by the functioning or malfunctioning of any component of the sprinkler system in or serving their Townhome; and
- (v) complying with any municipal or other regulatory inspection requirements, at such Owner's expense.

Components of a fire sprinkler system may be located in the attic portion of the Townhome. If the attic is also the location of air conditioning equipment or other equipment that requires periodic servicing or repair, to ensure protection of the water lines and sprinkler heads, the Owner is advised to closely supervise all persons using the attic.

**The Association does not inspect or fix water lines  
and sprinkler heads, if any, in your Townhome.**

**3.04 Adjacent Use.** No representations are made regarding the use of adjacent property.

**3.05 Outside Conditions.** Since in every neighborhood there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Property that an Owner or Resident may find objectionable, and it shall be the sole



responsibility of an Owner or Resident to become acquainted with neighborhood conditions that could affect the Property.

**3.06 Concrete.** Minor cracks in poured concrete, including foundations, garage floors, sidewalks, driveways and patios, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of a Structure.

**3.07 Moisture.** Improvements within a Structure may trap humidity created by general use and occupancy. As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Residents, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

**3.08 Mold and/or Mildew.** Mold and/or mildew can grow in any portion of a Structure and/or Townhome that is exposed to elevated levels of moisture including, but not limited to, those portions of a Structure and/or Townhome in which HVAC condenser units are located. Each Owner is advised to regularly inspect the Owner's Townhome for the existence of mold, mildew and/or water intrusion (except when the water intrusion is part of the normal functioning of Improvements and appliances such as showers, sinks, dishwashers and other similar appliances and Improvements) and/or damage.

**3.09 Encroachments.** Improvements may have been constructed on adjoining lands that encroach onto the Property. The Association gives no representations or warranties as to property rights, if any, created by any such encroachments.

**3.10 Budgets.** Any budgets of the Association are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known.

**3.11 Light and Views.** The natural light available to and views from a Townhome or Lot can change over time due to among other things, additional development and the removal or addition of landscaping. **NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.**

**3.12 Schools.** No representations are being made regarding which schools may now or in the future serve the Property.

**3.13 Suburban Environment.** The Property is located in a suburban environment. Sound and vibrations may be audible and felt from such things as sirens, whistles, horns, the playing of music, people speaking loudly, trash being picked up, deliveries being made, equipment being operated, dogs barking, construction activity, building and grounds maintenance being performed, automobiles, buses, trucks, ambulances, airplanes, and other generators of sound and vibrations typically found in an suburban area. In addition to sound and vibration, there may be odors and light in suburban areas.

**3.14 Water Runoff.** The Property may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain. In addition, water may pond on various portions of the Property or the Common Area having impervious surfaces, such as rooftop terraces, patios, and balconies, as applicable.

**3.15 Chemicals.** Each Structure and Townhome will contain products that have water, powders, solids and industrial chemicals, which will be used in construction. The water, powders, solids and industrial chemicals will and do contain mold, mildew, fungus, spores and chemicals that may cause allergic or other bodily reactions in certain individuals. Leaks, wet flooring and moisture will contribute to the growth of molds, mildew, fungus or spores. The Association is not responsible for any illness or allergic reactions that a Person may experience as a result of mold, mildew, fungus, or spores. It is the responsibility of the Owner to keep their Townhome clean, dry, well ventilated and free of contamination.

**ARTICLE 4  
CREEKBEND HOMEOWNER'S ASSOCIATION, INC.**

**4.01 Organization.** The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the Articles nor the Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**4.02 Membership.**

(a) Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot. Within thirty (30) days after acquiring legal title to a Lot, if requested by the Board, an Owner must provide the Association with: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot; (2) the Owner's address, email address, and phone number(s); (3) any Mortgagee's name and address; and (4) the name, phone number(s), and email address of any Resident other than the Owner.

(b) Easement of Enjoyment – Common Area or Limited Common Area. Every Member will have a right and easement of enjoyment in and to all of the Common Area or Limited Common Area and an access easement by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot, subject to the following restrictions and reservations:

- (i) the right of the Board to cause such Improvements and features to be constructed upon the Common Area, as determined from time to time by the Association, in its sole and absolute discretion;
- (ii) the right of the Board to suspend the Member's right to use the Common Area for any period during which any Assessment

against such Member's Lot remains past due and for any period during which such member is in violation of any provision of the Restrictions;

- (iii) the right of the Board thereafter, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;
- (iv) the right of the Board thereafter, to grant easements or licenses over and across the Common Area;
- (v) the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;
- (vi) the right of the Board to promulgate Rules and Regulations regarding the use of the Common Area and any Improvements thereon;
- (vii) the right of the Board to designate excess parking as "guest" parking for the exclusive use of guests of Owners;
- (viii) the right of the Board to make rules relating to traffic flow on street parking and other uses of the streets and drives on the Property;
- (ix) the right of each Owner to the exclusive use of two (2) covered parking spaces; and
- (x) the right of the Board to contract for services with any third parties on such terms as the Board may determine.

**4.03 Governance.** As more specifically described in the Bylaws, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such purpose.

**4.04 Voting Rights.** The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members are set forth in the Bylaws.

**4.05 Powers.** The Association has the powers of a Texas nonprofit corporation. It further has the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, has the following powers at all times:

- (a) Rules and Regulations, and Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such Rules and Regulations,

policies, and Bylaws, as applicable, which are not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Property or the Common Area (including the operation, maintenance, and preservation thereof) or the Association.

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.

(d) Assessments. To levy and collect assessments, as provided in *Article 5* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot and into any Townhome thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and/or Townhome, and the maintenance and repair work conducted thereon or therein, will be a personal obligation of the Owner of the Lot so entered, will be deemed an Individual Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing these Restrictions before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL RELEASE AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 4.05(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar Improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by Applicable Law.

(h) Manager. To retain and pay for the services of a person or firm (the “**Manager**”) to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for any portion of the Property, Common Area, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes.

(j) Other Services and Properties. To obtain and pay for any other property, services, permits or other governmental approvals, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Restrictions or as determined by the Board.

(k) Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of the Board, the Association, or the Members.

(m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise.

(n) Authority with Respect to the Restrictions. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Restrictions. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 4.05(o)* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

(o) Membership Privileges. To establish Rules and Regulations governing and limiting the use of the Common Area and any Improvements thereon.

**4.06 Indemnification.** To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Articles or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (i) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

**4.07 Insurance.** The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against or incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability or otherwise.

**4.08 Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 4.05* hereinabove, the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board. The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election, add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the Resident of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

**4.09 Community Systems.** The Association is specifically authorized to provide, or to enter into contracts to provide Community Systems. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in Community Systems and services will occur from time to time. The Association, or any of its respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

## ARTICLE 5 COVENANT FOR ASSESSMENTS

### **5.01 Assessments.**

(a) Established by Board. Assessments established by the Board pursuant to the provisions of this *Article 5* will be levied against each Lot in amounts determined pursuant to *Section 5.07* below.

(b) Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot against which the Assessment is levied and will be secured by a lien hereby granted to the Association against each such Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

(c) Budget. Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association which sets forth: (i) an estimate of the expenses to be incurred by the Association during such year in performing its functions and exercising its powers under the Restrictions, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Restrictions, and (ii) an estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, giving due consideration to any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses will then be levied at the level of Assessments set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner. All such Assessments will be due and payable to the Association as established by and in a manner as the Board may designate in its sole and absolute discretion.

**5.02 Maintenance Fund.** The Board may establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Declaration. The funds of the Association may be used for any purpose authorized by the Restrictions and the Applicable Law.

**5.03 Monthly Assessments.** The Association shall possess the right, power, authority, and obligation to establish a regular assessment (the "**Monthly Assessments**") sufficient in the judgment of the Board to pay all Common Area expenses when due. Such Monthly Assessments so established for all Common Area expenses shall be payable by all the Owners. Monthly Assessments are due and payable on the first day of each calendar month. The Monthly Assessments shall be applied as determined by the Board for the payment of charges or expenses for which the Association is responsible, including, without limitation, charges or expenses relating to maintenance and repair of elements of the Property not the responsibility of the Owners, care of the Common Areas, Areas of Common Responsibility, casualty, public liability and other insurance coverages required or permitted to be maintained by the Association, governmental impositions not separately levied and assessed, utilities relating to the Common Areas or not separately metered. Professional services, such as management, accounting and legal, and such other costs and expenses as may reasonably relate to the proper maintenance, care, operation and management of the Property, and the administration of the Association established hereby, including an adequate reserve fund for the periodic maintenance, repair, and replacement of the Common Areas and Areas of Common Responsibility. No consent or approval of the Owners shall be required for the establishment of the Monthly Assessments. Collection of Monthly Assessments, as to each Owner, shall commence upon the acquisition by such Owner of title to such Owner's Townhome. The Monthly Assessments may not be increased by the Board by more



than ten percent (10%) without the affirmative vote of fifty-one (51%) of the votes of those Members who are present, in person or represented, at a meeting duly called for such purpose.

**5.04 Special Assessments.** In addition to the Monthly Assessments provided for above, the Board may levy special assessments (the “**Special Assessment**”) whenever in the Board’s opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any Special Assessments will be at the reasonable discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area. Any such special assessment must have an affirmative vote of sixty-seven percent (67%) of the votes of those Members who are present, in person or represented, at a meeting duly called for such purpose.

**5.05 Individual Assessments.** In addition to any other Assessments, the Board may levy an individual assessment (the “**Individual Assessment**”) against an Owner and the Owner’s Lot. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or the Owner’s Lot into compliance with the Declaration; fines for violations of the Restrictions; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner’s guests, invitees or Residents of the Owner’s Lot; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and “pass through” expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to the benefit received.

**5.06 Working Capital Assessment.** Each Owner (of a Lot will pay a one-time working capital assessment to the Association in such amount as may be determined by the Board, from time to time, in its sole and absolute discretion. Such working capital assessment need not be uniform among all Lots, and the Board is expressly authorized to levy working capital assessments of varying amounts depending on the size, use, and general character of the Lots then being made subject to such levy.

Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association’s assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner’s spouse, child, or parent. In the event of any dispute regarding the application of the working capital assessment to a particular Owner, the Board’s determination regarding the application of the exception will be binding and conclusive without regard to any contrary interpretation of this *Section 5.06*. The working capital assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 5* and will not be considered an advance payment of such Assessments. The working capital assessment hereunder will be due and payable by the transferee to the Association immediately upon each transfer of title to the Lot, including upon transfer of title from one Owner of such Lot to any subsequent purchaser or transferee thereof. The Board will have the power to waive the payment

of any working capital assessment attributable to a Lot (or all Lots) by the Recordation of a waiver notice, which waiver may be temporary or permanent.

**5.07 Late Charges.** If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be levied as an Individual Assessment against the Lot owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

**5.08 Owner's Personal Obligation; Interest.** Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of one and one half percent (1 1/2%) per month), together with all costs and expenses of collection, including reasonable attorney's fees. Such amounts will be levied as an Individual Assessment against the Lot owned by such Owner.

**5.09 Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 5* is, together with late charges as provided in *Section 5.09* and interest as provided in *Section 5.10* hereof and all costs of collection, including attorney's fees as herein provided, secured by the continuing Assessment lien granted to the Association pursuant to *Section 5.01(b)* above, and will bind each Lot in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot, except only for: (i) tax liens and governmental assessment liens; (ii) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot in question; and (iii) home equity loans or home equity lines of credit which are secured by a Recorded second mortgage lien or Recorded second deed of trust lien of record; provided that, in the case of subparagraphs (ii) and (iii) above, such Mortgage was Recorded before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an authorized officer, agent, or attorney of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice may be signed by one of the authorized officers, agents, or attorneys of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot subject to this Declaration, will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have by law and under this Declaration, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid

lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 5.10*, the Association will upon the request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release will be signed by an authorized officer, agent, or attorney of the Association. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such twelve (12) day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, terminate, in such manner as the Board deems appropriate, any utility or cable service provided through the Association and not paid for directly by an Owner or Resident to the utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Resident of the Owner's Lot can make arrangements for payment of the bill and for reconnection of service. Utility or cable service will not be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot will not relieve the Owner of such Lot or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot and on the date of such conveyance Assessments against the Lot remain unpaid, or said Owner owes other sums or fees under this Declaration to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot, and such sums will be paid in preference to any other charges against the Lot other than liens superior to the Assessment lien and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot which are due and unpaid. The Owner conveying such Lot will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the expenses associated with updating the Association's records upon the transfer of a Lot to a third party.

**Yes, the Association *can* foreclose on your Townhome!**  
**If you fail to pay assessments to the Association, you may lose title to your townhome if the Association forecloses its assessment lien.**

**5.10 Exempt Property.** The following areas will be exempt from the Assessments provided for in this Article:

- (a) all area dedicated and accepted by a public authority; and
- (b) the Common Area.

**5.11 Fines and Damages Assessment.** The Board may assess fines against an Owner for violations of the Restrictions which have been committed by an Owner, a Resident, or the Owner or Residents guests, agents or invitees. Any fine and/or charge for damage levied in accordance with this *Section 5.11* will be considered an Individual Assessment pursuant to this Declaration. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area or any facilities caused by the Owner, Resident, or their guests, agents, or invitees. The Manager will have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Rules and Regulations and/or informing them of potential or probable fines or damage assessments. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 5.09* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 5.01(b)* of this Declaration. The Board may from time to time adopt an enforcement policy and schedule of fines.

## **ARTICLE 6 MAINTENANCE AND REPAIR OBLIGATIONS**

**6.01 Overview.** Generally, the Association maintains the Common Area, and the Owner maintains his or her Lot and the Structure and Townhome located thereon. If any Owner fails to maintain his or her Lot and the Structure and Townhome located thereon, the Association may perform the work at the Owner's expense. This Declaration assigns portions of the Structures, Townhomes and Lots to the "**Area of Common Responsibility**", as defined and described below. The Area of Common Responsibility is maintained by the Association and not the Owner. On the date of this Declaration, the initial designation of components of Structures, Townhomes, and Lots included within the Area of Common Responsibility is attached hereto as Exhibit "B".

**6.02 Association Maintains.** The Association's maintenance obligations will be discharged when and how the Board deems appropriate. Unless otherwise provided in this Declaration, the Association maintains, repairs and replaces, as a common expense, the portions of the Property or the Common Area listed below, regardless of whether the portions are on an Owner's Lot:

- (i) the Common Area;
- (ii) the Area of Common Responsibility;
- (iii) any real and personal property owned by the Association not otherwise designated as a Common Area;

- (iv) any property adjacent to the Property or the Common Area if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property; and
- (v) any area, item, easement or service the maintenance of which is assigned to the Association by this Declaration or in accordance with any recorded plat of the Property.

The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that: (i) such maintenance responsibility is assigned to an Owner under this Declaration; (ii) such maintenance responsibility is otherwise assumed by or assigned to an Owner; or (iii) such property is dedicated to any local, state or federal government or quasi-governmental entity; provided, however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Area by an Owner or Resident that is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Resident and the Owner and Resident shall not be entitled to reimbursement from the Association or an offset to Monthly Assessments even if the Association accepts the maintenance or repair.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner or Resident of any Lot or any other person or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Area or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner or Resident of a Lot has put the Association on written notice of a specific leak or flow from any portion of the Common Area and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner or Resident of any Lot for loss or damage, by theft or otherwise, of any property, which may be stored in or upon any of the Common Area or any Lot. The Association shall not be liable to any Owner or Resident, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association or from any action taken by the Association to comply with any law ordinance or with any order or directive of any municipal or other governmental authority.

**6.03 Area of Common Responsibility.** The Association has the right, but not the duty to designate, from time to time, portions of a Structure, Townhome, and Lot as an Area of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a Common Expense. A designation applies to every Lot having the identified feature. The cost of maintaining the Area of Common Responsibility is added to the annual budget and assessed

uniformly against all Townhome Lots as a Monthly Assessment, unless the Owners of at least a Majority of the Lots decide to assess the costs as Individual Assessments.

(a) Easement. The Association is hereby granted an easement over and across each Structure, Lot and Townhome to the extent reasonably necessary or convenient for the Association or its designee to maintain, repair and/or replace the Area of Common Responsibility. Unless otherwise agreed to by the Owner of the Lot to be accessed or an emergency, access to the Area of Common Responsibility is limited to Monday through Friday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual maintenance activities. If the Association damages any Improvements located within a Structure, Lot or Townhome in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of the damaged Improvements.

(b) Change in Designation. The Association may, from time to time, include additional components of Structures, Lots and Townhomes within the Area of Common Responsibility; however, in no event may the Association at any time remove from the Area of Common Responsibility components of Structures, Lots or Townhomes previously designated as an Area of Common Responsibility under this Declaration. Any modification must be approved by a majority of the Townhome Owners. Any such modification must have an affirmative vote of sixty-seven percent (67%) of the votes of those Members who are present, in person or represented, at a meeting duly called for such purpose. Any modification or amendment to the Area of Common Responsibility must be recorded in the Official Public Records of Dallas County, Texas.

#### **6.04 Inspection Obligations**

(a) Contract for Services. In addition to the Association's general maintenance obligations set forth in this Declaration, the Association may contract with or otherwise retain the services of independent, qualified, licensed individuals or entities to provide the Association with inspection services for the Area of Common Responsibility.

(b) Schedule of Inspections. Such inspections shall take place at occasions deemed necessary by the Board, in its sole discretion. The inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair that either require current action by the Association or will need further review and analysis. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. Subject to the provisions of the Declaration below, the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

**6.05 Owner Responsibility.** This Declaration contemplates that the Association will maintain some significant components of the Structures, Townhomes and Lots. Every Owner is responsible for the maintenance, repair and replacement of all Improvements located on such Owner's Lot, unless such Improvements are expressly maintained by the Association as an Area of Common Responsibility. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of their Lot:

- (i) to maintain, repair, and replace the Structure and Townhome located on the Owner's Lot and any Improvements which exclusively serve such Owner's Lot, except for the Area of Common Responsibility;
- (ii) to not do any work or fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto;
- (iii) to be responsible for his own willful or negligent acts and those of his or the Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of Common Area or the property of another Owner, or any component of the Property for which the Association has maintenance and/or insurance responsibility;
- (iv) to perform his or her responsibilities in such manner so as not to unreasonably disturb other Owners and Residents;
- (v) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and
- (vi) to pay for the cost of repairing, replacing or cleaning up any item that is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants or guests, with the cost thereof to be added to and to become part of the Owner's next chargeable Assessment.

**SEE EXHIBIT "B"**  
**IF IT IS NOT AN AREA OF COMMON RESPONSIBILITY, THEN IT IS**  
**THE OWNER'S INDIVIDUAL RESPONSIBILITY.**

**6.06 Yard Maintenance.** As set forth on the Designation of Area of Common Responsibility and Maintenance Chart, attached as Exhibit "B", each Owner is obligated to maintain those yard areas within his or her Lot which are bounded or enclosed by a fence. The

Association is obligated to maintain, as an Area of Common Responsibility, all yard areas within a Lot, other than those yard areas enclosed or bounded by a fence. Shrubs and trees may not be planted, and no modifications may be made to a yard, without the prior written approval of the ACC. Specifically, the Owner must:

- (i) maintain an attractive ground cover or lawn on all yards visible from a street or Common Area;
- (ii) mow the lawns and grounds at regular intervals;
- (iii) prevent lawn weeds or grass from exceeding six (6) inches in height;
- (iv) not plant vegetable gardens that are visible from a street; and
- (v) maintain an attractive appearance for shrubs and trees visible from a street.

**6.07 Disputes.** If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by the Board, who shall delegate such maintenance responsibility to either the Association or the individual Owner(s), as determined by the Board in its sole and absolute discretion.

## **ARTICLE 7 INSURANCE**

**7.01 Type of Insurance.** A townhome development provides many complex issues and opportunities for insurance. There are valid reasons for having the Association insure the individually owned Townhomes, and valid reasons why the Owners should insure their own Townhomes. The purpose of the Association's procurement of property insurance is to help ensure continuation of the Property as close as practicable to its original intended design, construction, quality, and appearance, in event of substantial losses resulting from covered perils, by maintaining coverages in sufficient amounts to provide financial protections against third-party claims, and against claims filed by the Association for restoration of certain damaged Property, including Common Areas.

The Association shall be entitled to obtain and maintain such insurance coverages as the Board deems necessary or appropriate. The premiums for insurance coverage maintained by the Association shall be designated by the Board as a Common Expense.

The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at unreasonable cost.

The Association may obtain the following, in its discretion:



(a) as a Common Expense, a commercial general liability insurance policy covering all Common Areas. Such coverage may be for all occurrences commonly insured against and shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, medical payments, and deaths of persons arising out of or in connection with the use, ownership, or maintenance of the Common Areas.

(b) insurance policies may provide that (i) the coverage of the policy is not prejudiced by any act or omission of an individual Owner to the extent that such act or omission is not within the collective control of all Owners of the Townhomes; such policy is primary insurance if at the time of a loss under the policy any Townhome Owner has other insurance covering the same property covered by the policy; and (ii) no action or omission by any Owner, unless validly exercised on behalf of the Association, will void the policy or be a condition to recovery under the policy.

(c) the Board shall have the express authority, on behalf of the Association, to name as insured an authorized representative, including any trustee (or successor thereto) with whom the Association has entered into any insurance trust agreement, which authorized representative shall have exclusive authority to negotiate losses under any policy providing the property or liability insurance required to be provided herein.

(d) as a Common Expense and to the extent it is reasonably available as set forth above, a “master” or “blanket” policy of property insurance insuring against all risks of direct physical loss commonly insured against including fire and extended coverage, covering all Townhomes and Area of Common Responsibility. Such “blanket” or “master” policy may insure, for one hundred percent (100%) of the full replacement value of the items covered against loss or damage by fire or other perils normally covered by the standard extended coverage endorsement available in the State of Texas and against all other perils customarily covered with respect to Association projects which are similar to the Townhomes in construction, location, and use, including all perils normally covered by the standard “all risk” endorsement. **Due to the costs of the a “master” or “blanket” policy of property insurance, it is highly likely that the Owners will be required to carry the property insurance coverage for their Townhome.**

**7.02 Townhome Insurance.** An Owner of a Townhome shall be solely responsible for obtaining and maintaining at such Owner's sole cost and expense, all general liability insurance and all insurance covering all alterations, additions, betterments and improvements to such Owner's Townhome and all other personal property located at the Owner's Townhome or constituting a part thereof. Nothing herein shall be deemed or construed as prohibiting an Owner, at such Owner's sole cost and expense, from obtaining and maintaining such further and supplemental, insurance coverages as such Owner may deem necessary or appropriate. The Association recommends that each Owner consult with his or her insurance representative to insure their Townhome, including personal property in his or her Townhome, including vehicle(s), are appropriately insured.

**7.03 Additional Insurance.** The Association shall be entitled to obtain and maintain such additional insurance coverages hereunder as the Board of Directors deem reasonably

necessary or appropriate including, without limitation, liability insurance for all officers, directors, trustees and employees of the Association.

**7.04 Association Does Not Insure.** The Association does not insure an Owner or occupant's personal property. Each Owner and occupant is solely responsible for insuring his or her personal property in the Townhome and on the Property, including furnishings, vehicles, and stored items. THE ASSOCIATION STRONGLY RECOMMENDS THAT EACH OWNER AND OCCUPANT PURCHASE AND MAINTAIN INSURANCE ON HIS OR HER PERSONAL BELONGINGS.

**7.05 Owner's General Responsibility for Insurance.** Each Owner, at his or her expense, will maintain all insurance coverages required of Owners by the Association pursuant to this Article. If an Owner fails to maintain required insurance, or to provide the Association with proof of same if the Association requests such proof, the Board may obtain insurance on behalf of the Owner who will be obligated for the cost as an Individual Assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually, obtained and maintained by the Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner and resident are solely responsible for insuring his or her personal property in his/her/its Townhome and Lot, including furnishings, vehicles, and stored items. If the Association is unable to insure the Townhome due to unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at unreasonable cost, then each Owner shall obtain and maintain property insurance on all insurable improvements on his or her Townhome and Lot, in an amount sufficient to cover 100% of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard or loss.

**7.06 Owner's Liability For Insurance Deductible.** If repair or restoration of a Townhome, a Structure, Common Area, Area of Common Responsibility, or any Improvement thereon is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner(s) or occupant(s) who would be responsible for the cost of the repair or reconstruction in the absence of insurance. Notwithstanding the foregoing, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner, then the Board may levy an Individual Assessment against the Owner and his Lot for the amount of the deductible that is attributable to the act or omission.

## ARTICLE 8 ARCHITECTURAL CONTROL COMMITTEE

The Association has a substantial interest in ensuring that Improvements within the Property are maintained in a well-kept, first-class condition.

**8.01 Construction of Improvements.** No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone without the prior written approval of the ACC.

## **8.02 Architectural Control Committee.**

(a) Composition. The ACC will be composed of not more than three (3) persons appointed, as provided below, who will review Improvements proposed to be made by any Owner. The Board has the right to appoint and remove (with or without cause) all members of the ACC. The Board may not appoint or elect a person to serve on the ACC if the person is a current Board member, a current Board member's spouse, or a person residing in a current Board member's household.

(b) Submission and Approval of Plans and Specifications. Construction plans and specifications will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with *Section 8.02(c)* to the ACC or at such address as may hereafter be designated in writing from time to time. No Improvement may be constructed, placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the ACC or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to the clearing of any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

(c) Design Guidelines. The ACC, with written consent from the Board, will have the power, from time to time, to adopt, amend, modify, or supplement the Design Guidelines, if any. In the event of any conflict between the terms and provisions of the Design Guidelines, if any, and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder; provided, however, that any excess funds held by the ACC will be distributed to the Association at the end of each calendar year. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(d) Actions of the ACC. The ACC may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the ACC, except the granting of variances. In the absence of such designation, the vote of a Majority of all of the members of the ACC taken at a duly constituted meeting will constitute an act of the ACC.

(e) Failure to Act. In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, rejection of such plans and specifications by the ACC will be presumed. In furtherance, and not in limitation, of the foregoing, any failure of the ACC to act upon a request for a variance will not be deemed a consent to such variance, and the ACC's written approval of all requests for variances will be expressly required.

(f) Variances. The ACC, with written consent from the Board, may grant variances from compliance with any of the provisions of the Design Guidelines, if any, or this Declaration, when, in the opinion of the ACC and Board such variance is justified. All variances must be evidenced in writing and must be signed by at least a Majority of the members of the ACC and Board officer. Each variance must also be Recorded; provided however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the ACC, the Association, or the Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines, if any, will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines, if any, for any purpose except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration or the Design Guidelines, if any.

(g) Duration of Approval. The approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion within either: (i) one year after issuance of approval of such plans and specifications; or (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion, the Owner will be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this *Section 8.02(g)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(h) No Waiver of Future Approvals. The approval of the ACC to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the ACC.

(i) Non-Liability of Committee Members. NEITHER THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION.

## ARTICLE 9 MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Property. The provisions of this Article apply to the Declaration and the Bylaws of the Association.

**9.01 Notice of Action.** An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an “**Eligible Mortgage Holder**”), will be entitled to timely written notice of:

- (i) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is an eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or
- (ii) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

**9.02 Examination of Books.** The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

**9.03 Taxes, Assessments and Charges.** All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law will relate only to the individual Lots and not to any other portion of the Property.

## ARTICLE 10 GENERAL PROVISIONS

**10.01 Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Property, and will perpetually inure to the benefit of and be enforceable by the Association, and every Owner, and their respective legal representatives, heirs, successors, and assigns. Unless ninety (90%) of all outstanding votes of the Members that are entitled to be cast approve the termination of this Declaration, the provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law. A written instrument terminating this Declaration shall not be effective unless recorded. If a local government requires its prior approval of a change of status for the Property or to terminate the Association, then the amendment must also be executed by the local government.

**10.02 Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated uniformly and paid jointly to the Owners and the holders of Mortgages or deeds of trust on the respective Lot.

**10.03 Amendment.** This Declaration may be amended by the Recording of an instrument executed and acknowledged by the affirmative vote of at least sixty-seven percent (67%) of all outstanding votes of the Owners, with each Lot being entitled to one (1) vote. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. Notwithstanding the foregoing, the Board may unilaterally amend this Declaration: (i) to bring any provision into compliance with Applicable Law, or (ii) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development.

**10.04 Enforcement.** Except as otherwise provided herein, any Owner of Lot, at such Owner's own expense, the Association will have the right to enforce, by a proceeding at law or in equity, all of the provisions of this Declaration. The Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense) or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Property or the Common Area is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein. The Association will have the right to enforce, by a proceeding at law or in equity, the Restrictions. Failure to enforce any right, provision, covenant, or condition set forth in the Restrictions will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Association to enforce the terms and provisions of the Restrictions shall in no event give rise to any claim or liability against the Association, or any of their partners, directors, officers, or agents. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS, OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE RESTRICTIONS.**

**10.05 No Waiver.** The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Restrictions. Failure by the Association or by any Owner to enforce a provision of the Restrictions is not a waiver of the right to do so thereafter.

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

**10.07 Higher Authority.** The terms and provisions of this Declaration are subordinate to Applicable Law. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with Applicable Law.

**10.08 Severability.** If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

**10.09 Conflicts.** If there is any conflict between the provisions of this Declaration, the Articles, the Bylaws, or any Rules and Regulations, the provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations, in such order, will govern.

**10.10 Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

**10.11 Notices.** Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

**10.12 Acceptance by Owners.** Each Owner of a Lot or other real property interest in the Property, by the acceptance of a deed of conveyance, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. All impositions and obligations hereby imposed will constitute covenants running with the land within the Property, and will bind any person having at any time any interest or estate in the Property, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

**10.13 No Partition.** Except as may be permitted in this Declaration or amendments thereto, no physical partition of the Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the portion of the Property or the Common Area in question has been removed from the provisions of this Declaration. This *Section 10.13* will not be construed to prohibit the Board from

acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration, nor will this provision be constructed to prohibit or affect the creation of a condominium regime in accordance with the Texas Uniform Condominium Act.

## **ARTICLE 11 EASEMENTS**

**11.01 Owner's Easement of Enjoyment.** Every Owner is granted a right and easement of enjoyment over the Common Area and to use of Improvements thereon, subject to other rights and easements contained in the Restrictions. An Owner who does not occupy a Townhome delegates this right of enjoyment to the Residents of the Townhome, and is not entitled to use the Common Area.

**11.02 Owner's Parking Rights.** Ownership of each Lot shall include ownership of a carport covering two (2) automobile parking spaces, together with the right of ingress and egress in an upon said parking areas, subject only to any rules and regulations of the Association and the restrictions herein set forth regarding the storage of boats, trailers, campers, non-passenger vehicles, and inoperable vehicles or other items which the Board may, in its discretion, deem unsightly or inappropriate.

**11.03 Owner's Maintenance Easement.** Each Owner is hereby granted an easement over and across any adjoining Townhome and Lot and the Common Area to the extent reasonably necessary to maintain or reconstruct such Owner's Townhome, subject to the consent of the Owner of the adjoining Lot and Townhome and the consent of the Board as provided below, or the consent of the Board in the case of Common Area, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Lot and/or Townhome or Common Area. Requests for entry into an adjoining Lot must be made to the Owner of such Lot in advance. The consent of the adjoining Lot Owner will not be unreasonably withheld; however, the adjoining Lot Owner may require that access to the Lot be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m. or as otherwise agreed upon by the Lot Owners, and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Area for the purpose of maintaining or reconstructing any Townhome or Improvement must be made in advance to the Board. The consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common Area be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m. or as otherwise agreed upon by the Lot Owner and the Board, and then only in conjunction with actual maintenance or reconstruction activities. In addition, the Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Common Area during any such maintenance or reconstruction. If an Owner damages an adjoining Townhome, Improvement, or Common Area in exercising the easement granted hereunder, the Owner will be required to restore the Townhome, Improvement, or Common Area to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Townhome.



Notwithstanding the foregoing, no Owner shall perform any work to any portion of his or her Townhome or Lot if the work requires access to, over or through the Common Area or other Lots and/or Townhomes without the prior consent of the ACC except in case of an emergency. All such work may only be performed by a person who shall deliver to the ACC prior to commencement of such work, in form satisfactory to the Board:

- (i) releases of the Board, the ACC, and the Association for all claims that such person may assert in connection with such work;
- (ii) indemnities of the Board, the ACC, and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Area, or other Lots and Townhomes;
- (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board; and
- (iv) all other information and assurances which the Board may reasonably require.

**11.04 Owner's Ingress/Egress Easement.** Each Owner of a Townhome is hereby granted a perpetual easement over the Property, including the Lots (but excluding any portion of the Lot enclosed by a private fence installed or approved by the ACC creating a private yard space for the Lot Owner), as may be reasonably required, for ingress to and egress from his Townhome, but subject to any Rules and Regulations adopted from time to time by the Board.

**11.05 Owner's Encroachment Easement.** Every Owner of a Townhome is granted an easement for the existence and continuance of any encroachment by his or her Townhome on any adjoining Lot, Townhome or Common Area now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a Townhome, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the Improvement stands.

**11.06 Easement of Cooperative Support.** Each Owner is granted an easement of cooperative support over each adjoining Lot and Townhome as needed for the common benefit of the Property, or for the benefit of Townhomes in a Structure, or Townhomes that share any aspect of the Property that requires cooperation. By accepting an interest in or title to a Lot, each Owner: (i) acknowledges the necessity for cooperation in a townhome; (ii) agrees to try to be responsive and civil in communications pertaining to the Property and to the Association; (iii) agrees to provide access to the Townhome and Lot when needed by the Association to fulfill its duties; and (iv) agrees to try refraining from actions that interfere with the Association's maintenance and operation of the Property.

**11.07 Association's Access, Maintenance, and Landscape Easement.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access, maintenance and entry over, across,

under, and through the Property, including without limitation, each Lot and each Townhome and all Improvements thereon for the following purposes:

- (i) to perform inspections and/or maintenance that is permitted or required of the Association by the Restrictions or by Applicable Law;
- (ii) to perform maintenance that is permitted or required of the Owner by the Restrictions or by Applicable Law, if the Owner fails or refuses to perform such maintenance;
- (iii) to enforce the Restrictions;
- (iv) to exercise self-help remedies permitted by the Restrictions or by Applicable Law;
- (v) to respond to emergencies;
- (vi) to have the exclusive right to maintain landscaping and make, erect or install non-structural improvements (such as fences, irrigation systems, surface water drainage systems, lighting systems, walking or biking paths, and the like) in or on those portions of each Owner's Lot (but excluding any portion of such Lot enclosed by a private fence installed or approved by the ACC creating a private yard space for the Lot Owner unless such access is necessary to discharge the Association's responsibilities under this Declaration);
- (vii) to grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property; and
- (viii) to perform any and all functions or duties of the Association as permitted or required by the Restrictions or by Applicable Law.

**ARTICLE 12  
DISPUTE RESOLUTION**

**12.01 Agreement to Encourage Resolution of Disputes Without Litigation.** The Association, the Owners, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**"), voluntarily agree to encourage the amicable resolution of disputes involving the Property and the Common Area to avoid the emotional and financial costs of litigation. All disputes, except those relating to equitable remedies, collection of assessments, or the enforcement of this Declaration or the Restrictions by the Association, which are not resolved within fifteen (15) days after same have arisen may be submitted for, or determined by, non-binding mediation. Mediation of any dispute may be initiated by any Owner making a written demand to the Association or other Owner involved in such dispute. Such mediation shall occur within thirty (30) days after the demand for mediation is delivered and a mediator shall be appointed by the American Arbitration Association office in Dallas County, Texas, and shall occur at a mutually acceptable location in Dallas County, Texas. The Association may waive its right to participate in mediation. The costs of such mediation services, including the cost of their own travel and attorney's fees, shall be the responsibility of each party.

*[SIGNATURE PAGE FOLLOWS]*

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Dallas County, Texas.

**ASSOCIATION:**

**CREEKBEND HOMEOWNER'S  
ASSOCIATION, INC.,  
a Texas nonprofit corporation,**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: President

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, President of CREEKBEND HOMEOWNER'S ASSOCIATION, INC., a Texas nonprofit corporation, on behalf of said entity, known to me to be the person whose name is subscribed on the foregoing instrument and acknowledged to me that he executed the same for the purposes therein expressed and in the capacity therein stated.

(SEAL)

\_\_\_\_\_  
Notary Public Signature

**CERTIFICATION OF APPROVAL**

I, \_\_\_\_\_, the duly elected Secretary of Creekbend Homeowner's Association, Inc., hereby certify:

That this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Creekbend Townhomes was approved by Owners holding at least sixty-seven percent (67%) of the total votes of all Members at a duly called meeting held on \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at which a quorum was present and do approve the same for recording in the Official Public Records of Dallas County, Texas.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: Secretary

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

**ALL PROPERTY SUBJECT TO THE FINAL PLAT CREEKBEND TOWNHOMES, AN ADDITION TO THE CITY OF DALLAS, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 81127, PAGE 1441, OF THE MAP RECORDS OF DALLAS COUNTY, TEXAS.**

draft

**EXHIBIT “B”**

**DESIGNATION OF AREA OF  
COMMON RESPONSIBILITY AND  
MAINTENANCE CHART APPLICABLE TO TOWNHOMES ONLY**

**MAINTENANCE RESPONSIBILITY CHART**

“All aspects” includes maintenance, repair, and replacement, as needed.

<b>COMPONENT OF PROPERTY</b>	<b>ASSOCIATION’S AREA OF COMMON RESPONSIBILITY</b>	<b>OWNER RESPONSIBILITY (SUBJECT TO PRIOR APPROVAL BY ACC)</b>
Roofs.	None.	All aspects, including deckings, felt, shingles, metal flashing, roof trusses.
Roof mounted attachments.	None.	All aspects.
Exterior vertical walls of Townhomes, other exterior features of Townhomes not specifically listed in chart.	Exterior painting only.	Outermost materials only, such as siding, stucco, and brick, and any coatings or surface treatments on the material, sealant, wall cavities, and insulation.
Townhome foundations, patio slabs, and A/C slabs.	None.	All aspects including slab failure, repair for minor cracks that result from the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of the Townhome.
Concrete driveways and sidewalks.	Lead sidewalk leading to front door.	All structural aspects, including routine cleaning & including repair of minor cracks that result from the natural expansion & contraction of soil, shrinkage during the curing of the concrete and settling of the Townhome.
Retaining walls.	None.	None.
Displays of street numbers on exterior doors or Townhome surfaces.	None.	None.
Gutters and downspouts.	None.	All aspects.
Grounds – outside the fenced yards.	All aspects.	None.
Fences and gates around private Townhome yards.	All aspects.	None.

Yard irrigation system (sprinkler)	All aspects.	None.
Exterior light fixtures on Townhome.	Security light installed by Association.	All aspects.
Exterior doors of Townhomes.	Determining styles and materials of garage doors. Periodic paint on garage doors only.	All other aspects of the garage door, and all aspects of other doors, including paint, door frame, door, glass panes, hardware, locks, peepholes, thresholds, weatherstripping, and doorbells.
Garages.	None; must be constructed according to Association requirements and approval.	All aspects, except those noted for Association. Includes, routine interior cleaning, interior wall and ceiling materials, pedestrian door, automatic garage door opener, remote controls, interior light fixture, interior electrical outlets.
Skylights.	None.	All aspects.
Attics.	None.	All aspects.
Insulation & weatherstripping.	None.	All aspects.
Townhome interiors, including improvements, fixtures, partition walls & floors within Townhome.	None.	All aspects.
Sheetrock in Townhomes (walls and ceilings) & treatments on walls.	None.	All aspects.
Improvements and grounds in private/yards.	None.	All aspects.
Surface water drainage systems.	All aspects, including collection drains and drain systems.	None. Prohibited from changing the drainage system.
Windows.	None.	All aspects, including window frames, window sill flashings, window seals and sealants, screens, window locks, glass panes, glazing, interior caulking.
Water, sewer, electrical lines & systems.	None.	All aspects for lines and systems located on and serving the Lots.
Heating and cooling systems & water heaters.	None.	All aspects.
Intrusion alarms on doors/windows,	None.	All aspects.

smoke/heat detectors, monitoring equipment.		
Cable for television or internet.	None.	All aspects.
Television antennas & satellite dishes.	None.	All aspects.

NOTE 1: The components listed in the first column are applicable only if they exist, and may not be construed to create a requirement or obligation to have such a component.

NOTE 2: If an Owner fails or refuses to perform necessary maintenance, repair, or replacement, the Association may perform the work after giving required notice(s) to the Owner and charge such costs and expenses to the Owner as an Individual Assessment.



## EXHIBIT "C"

### LAW-BASED SECTIONS

L-C.1 POLITICAL SIGNS. Political signs may be erected upon a Lot by the Owner of the Lot advocating the election of one (1) or more political candidates or the sponsorship of a political party, issue, or proposal provided that such signs shall not exceed four (4) square feet, shall be erected no more than ninety (90) days in advance of the election to which they pertain, and are removed within ten (10) days after the election. The Association shall have the right to remove any sign that does not comply with the above, and in doing so shall not be subject to any liability in connection with such removal.

L-C.2 DISPLAY OF CERTAIN RELIGIOUS ITEMS. An Owner or Resident is permitted to display or affix to the entry of the Owner's Townhome one or more religious items, the display of which is motivated by the Owner's or Resident's sincere religious belief. This policy outlines the standards that shall apply with respect to the display or affixing of certain religious items on the entry to the Owner's Townhome.

- (a) General Guidelines. Religious items may be displayed or affixed to an Owner's entry door or door frame of the Owner's Townhome; provided, however, that individually or in combination with each other, the total size of the display is no greater than twenty-five square inches (5"x5"= 25 square inches).
- (b) Prohibitions. No religious item may be displayed or affixed to an Owner's Townhome that: (i) threatens the public health or safety; (ii) violates applicable law; (iii) contains language, graphics, or any display that is patently offensive for reasons other than its religious content; (iv) is in a location other than the owner's or resident's Townhome, *i.e.*, installed on property owned or maintained by the Association, or owned in common by two or more members of the Association; (v) is located in violation of any applicable building line, right-of-way, setback, or easement; or (vi) is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture. No religious item may be displayed or affixed in any location other than the entry door or door frame and in no event may extend past the outer edge of the door frame of the Owner's Townhome. Nothing in this policy may be construed in any manner to authorize an Owner to use a material or color for an entry door or door frame of the Owner's Townhome or make an alteration not the entry door or door frame that is not otherwise permitted pursuant to the Governing Documents.
- (c) Display Parameters.
  - (i) All religious displays must be located within 5' of the Townhome's frontmost building line (*i.e.*, within 5' of the front facade of the Townhome.)
  - (ii) Displays may not be located within building setbacks.
  - (iii) No portion of the display may extend above the lowest point of the Townhome's front roof line.
  - (iv) All displays must be kept in good repair.
  - (v) Displays may not exceed 5' in height x 3' in width x 3' in depth.
  - (vi) The number of displays is limited to three (3).

- (vii) These display parameters shall not apply to seasonal religious holiday decorations.
  - (viii) All religious item displays other than seasonal religious displays must receive prior approval from the ACC prior to installation, except for displays on any exterior door or door frame of the home that are 25 square inches or smaller. For example, and without limitation, no prior permission is required from the ACC to place a cross, mezuzah, or other similar religious symbol smaller than 25 square inches on the Townhome's front door or door frame.
- (d) Removal. The Association may remove any item which is in violation of the terms and conditions of this section.
- (e) Covenants in Conflict with Statutes. To the extent that any provision of the Restrictions restrict or prohibit an Owner from displaying or affixing a religious item in violation of the controlling provisions Texas Property Code § 202.018, the Association shall have no authority to enforce such provisions and the provisions of this policy shall hereafter control.

**L-C.3 RAINWATER HARVESTING SYSTEMS.** Texas statutes presently render null and void any restriction in the Declarations which prohibits the installation of rain barrels or a rainwater harvesting system on a residential Lot. The policy is adopted in lieu of any express prohibition against rain barrels or rainwater harvesting systems, or any provision regulation such matters which conflict with Texas law, as set forth in the Restrictions.

**L-C.3.1 ACC APPROVAL REQUIRED.** Approval by the ACC is required prior to installing rain barrels or a rainwater harvesting system on a Lot ("Rainwater Harvesting System"). The ACC is not responsible for (a) errors in or omissions in the application submitted to the ACC for approval; (b) supervising installation or construction to confirm compliance with an approved application; or (c) the compliance of an approved application with governmental codes and ordinances and state and federal laws.

**L-C.3.2 PROCEDURES AND REQUIREMENTS.**

(a) APPROVAL APPLICATION. To obtain ACC approval of a Rainwater Harvesting System, the Owner or Resident shall provide the ACC with the following information: (i) the proposed installation location of the Rainwater Harvesting System; and (ii) a description of the Rainwater Harvesting System, including the color, dimensions, manufacturer, and photograph or other accurate depiction ("Rain System Application"). A Rain System Application may only be submitted by an Owner unless the Owner's Resident provides written confirmation at the time of submission that the Owner consents to the Rain System Application.

(b) APPROVAL PROCESS. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the Restrictions. A Rain System Application submitted to install a Rainwater Harvesting System on property owned by the Association will not be approved. A proposal to install a Rainwater Harvesting System on property owned by the Association must be approved in advance and in writing by the Board and the Board need not adhere to this policy when considering any such request. Each Owner is advised that if the Rain System Application is

approved by the ACC, installation of the Rainwater Harvesting System must: (i) strictly comply with the Rain System Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. IF the Owner fails to cause the Rain System Application to be installed in accordance with the approved Rain System Application, the ACC may require the Owner to: (i) modify the Rain System Application to accurately reflect the Rain System Device installed on the Lot; or (ii) remove the Rain System Device and reinstall the device in accordance with the approved Rain System Application. Failure to install a rain System Device in accordance with the approved Rain System Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Rain System Application or remove and relocate a rain System Device in accordance with the approved Rain System shall be at the Owner's sole cost and expense.

(c) APPROVAL CONDITIONS. Unless otherwise approved in advance and in writing by the ACC, each Rain System Application and each Rain System Device to be installed in accordance therewith must comply with the following:

(i) The Rain System Device must be consistent with the color scheme of the Townhome constructed on the Owner's Lot, as reasonably determined by the ACC.

(ii) The Rain System Device does not include any language or other content that is not typically displayed on such a device.

(iii) The Rain System Device is in no event located between the front of the Townhome constructed on the Owner's Lot and any adjoining or adjacent street.

(iv) There is sufficient area on the Owner's Lot to install the Rain System Device, as reasonably determined by the ACC.

(v) If the Rain System Device will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, Common Properties, or another Owner's property, the ACC may regulate the size, type, shielding of, and materials used in the construction of the Rain System Device. See below for additional guidance.

(d) GUIDELINES FOR CERTAIN RAIN SYSTEM DEVICES. If the Rain System Device will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, Common Properties, or another Owner's property, the ACC may regulate the size, type, shielding of, and materials used in the construction of the Rain System Device. Accordingly, when submitting a Rain Device Application, the application should describe methods proposed by the Owner to shield the Rain System Device from the view of any street, Common Properties, or another Owner's Lot. When reviewing a Rain System Application for a Rain System Device that will be installed on or within the side yard of a Lot, or would otherwise be visible from a street, Common Properties, or another Owner's Lot, any additional regulations imposed by the ACC to regulate the size, type, shielding of, and materials used in the construction of the Rain System

Device may not prohibit the economic installation of the Rain System Device, as reasonably determined by the ACC.

L-C-4 FLAG DISPLAY AND FLAGPOLE INSTALLATION. Texas statutes presently render null and void any restriction that restricts or prohibits the display of certain flags or the installation of certain flagpoles on a residential lot in violation of the controlling provisions of Texas Property Code § 202.011 or any federal or other applicable state law. The Association has adopted this policy in lieu of any express prohibition against certain flags and flagpoles, or any provision regulating such matters which conflict with Texas law, as set forth in the Restrictions.

L-C-4.1 ARCHITECTURAL REVIEW APPROVAL.

- (a) APPROVAL REQUIRED. Approval by the ACC is required prior to installing a flagpole no more than five feet (5') in length affixed to the front of a Townhome near the principal entry or affixed to the rear of a Townhome ("Mounted Flagpole"). A Mounted Flag or Mounted Flagpole must be approved in advance by the ACC. The ACC is not responsible for: (i) errors in or omissions in the application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved application; or (iii) the compliance of an approved application with governmental codes and ordinances, state, and federal laws.
- (b) APPROVAL REQUIRED. Approval by the ACC is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot (the "Freestanding Flagpole"). The ACC is not responsible for: (i) errors in or omissions in the application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved application; or (iii) the compliance of an approved application with governmental codes and ordinances, state, and federal laws.

L-C-4.2 PROCEDURES AND REQUIREMENTS

- (a) APPROVAL APPLICATION. To obtain ACC approval of any Freestanding Flagpole, the Owner shall provide the ACC with the following information: (a) the location of the flagpole to be installed on the Lot; (b) the type of flagpole to be installed; (c) the dimensions of the flagpole; and (d) the proposed materials of the flagpole (the "Flagpole Application"). A Flagpole Application may only be submitted by an Owner unless the Owner's Resident provides written confirmation at the time of submission that the Owner consents to the Flagpole Application.
- (b) APPROVAL PROCESS. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required herein, which govern the review and approval of improvements. A Flagpole Application submitted to install a Freestanding Flagpole on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install a Freestanding Flagpole on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy

when considering any such request.

(c) Each Owner is advised that if the Flagpole Application is approved by the ACC, installation of the Freestanding Flagpole must: (i) strictly comply with the Flagpole Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Freestanding Flagpole to be installed in accordance with the approved Flagpole Application, the ACC may require the Owner to: (i) modify the Flagpole Application to accurately reflect the Freestanding Flagpole installed on the Lot; or (ii) remove the Freestanding Flagpole and reinstall the flagpole in accordance with the approved Flagpole Application. Failure to install a Freestanding Flagpole in accordance with the approved Flagpole Application or an Owner's failure to comply with the post approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Flagpole Application or remove and relocate a Freestanding Flagpole in accordance with the approved Flagpole Application shall be at the Owner's sole cost and expense.

L-C-4.3 INSTALLATION, DISPLAY, AND APPROVAL CONDITIONS. Unless otherwise approved in advance and in writing by the ACC, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

- (a) No more than one (1) Freestanding Flagpole or no more than two (2) Mounted Flagpoles are permitted per Lot, on which only Mounted Flags may be displayed;
- (b) Any Mounted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;
- (c) Any Mounted Flag displayed on any flagpole may not be more than three feet (3') in height by five feet in width (3'x5');
- (d) With the exception of flags displayed on Common Properties owned and/or maintained by the Association and any Lot which is being used for marketing purposes by a builder, the flag of the United States of America must be displayed in accordance with 4 U.S.C. §§ 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;
- (e) The display of a flag, or the location and construction of the flagpole must comply with all applicable zoning ordinances, easements and setbacks of record;
- (f) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the Townhome;
- (g) A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced, or removed;

- (h) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and
- (i) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

L-C-5 SOLAR DEVICE AND ENERGY EFFICIENT ROOFING. Texas statutes presently render null and void any restriction that prohibits the installation of solar devices or energy efficient roofing on a residential lot. The Association has adopted this policy in lieu of any express prohibition against solar devices or energy efficient roofing, or any provision regulating such matters which conflict with Texas law.

L-C-5-1 DEFINITIONS AND GENERAL PROVISIONS.

- (a) Solar Energy Device Defined. A "Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.
- (b) Energy Efficiency Roofing Defined. As used in this Policy, "Energy Efficiency Roofing" means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities.
- (c) Architectural Review Approval Required. Approval by the ACC is required prior to installing a Solar Energy Device or Energy Efficient Roofing. The ACC is not responsible for: (i) errors in or omissions in the application submitted to the ACC for approval; (ii) supervising the installation or construction to confirm compliance with an approved application; or (iii) the compliance of approved application with governmental codes and ordinances, state, and federal laws.

L-C-5.2 SOLAR ENERGY DEVICE PROCEDURES AND REQUIREMENTS.

- (a) Approval Application. To obtain ACC approval of a Solar Energy Device, the Owner shall provide the ACC with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "Solar Application"). A Solar Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Solar Application.
- (b) Approval Process. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the Restrictions. The ACC will approve a Solar Energy Device if the Solar Application complies

with this Section UNLESS the ACC makes a written determination that placement of the Solar Energy Device, despite compliance with this Section will create a condition that substantially interferes with the use and enjoyment of the property within the community by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The ACC's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of property immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Notwithstanding the foregoing provision, a Solar Application submitted to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by members of the Association will not be approved despite compliance with this Section. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this policy when considering any such request. Each Owner is advised that if the Solar Application is approved by the ACC, installation of the Solar Energy Device must (i) strictly comply with the Solar Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Solar Energy Device to be installed in accordance with the approved Solar Application, the ACC may require the Owner to: (i) modify the Solar Application to accurately reflect the Solar Energy Device installed on the property; or (ii) remove the Solar Energy Device and reinstall the device in accordance with the approved Solar Application. Failure to install a Solar Energy Device in accordance with the approved Solar Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this policy and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Solar Application or remove and relocate a Solar Energy Device in accordance with the approved Solar Application shall be at the Owners sole cost and expense.

L-C-5.3 APPROVAL CONDITIONS. Unless otherwise approved in advance and in writing by the ACC, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

- (a) The Solar Energy Device must be located on the roof of the Townhome located on the Owner's lot, entirely within a fenced area of the Owner's lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the Townhome, the ACC designate the placement shall not be on the roof facing the Street or Road unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten (10) percent above the energy production of the Solar Energy Device if installed in the location designated by the ACC. If the Owner desires to contest the alternate location proposed by the ACC, the Owner should submit information to the ACC which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend

above the fence line.

- (b) If the Solar Energy Device is mounted on the roof of the Townhome located on the Owner's Lot, then: (i) the Solar Energy Device may not extend higher than or beyond the roofline; (ii) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; (iii) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

L-C-5.4 ENERGY EFFICIENT ROOFING. The ACC will not prohibit an Owner from installing Energy Efficient Roofing provided that the Energy Efficient Roofing shingles: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property. An Owner who desires to install Energy Efficient Roofing will be required to comply with the architectural review and approval procedures set forth in the Restrictions. In conjunction with any such approval process, the Owner should submit information which will enable the ACC to confirm the criteria set forth in the previous paragraph.

L-C-6 SWIMMING POOL ENCLOSURES. Texas statutes presently render null and void any restriction in the Declaration which prohibits the installation of a swimming pool enclosure on a residential Lot. The policy is adopted in lieu of any express prohibition against a swimming pool enclosure, or any provision regulation such matters which conflict with Texas law, as set forth in the Restrictions. A "Swimming Pool Enclosure", as used herein shall mean and refer to a fence that surrounds a water feature, including a swimming pool or a spa, installed as a safety measure to prevent accidental drownings of children. A Swimming Pool Enclosure may not be installed upon or within Common Properties or any area which owned or maintained by the Association. An Owner may submit plans for and install a Swimming Pool Enclosure upon written approval by the ACC. All Owners installing a Swimming Pool Enclosure shall comply as follows.

General Guidelines. The Swimming Pool Enclosure may be installed after receiving written approval from the ACC. The submittal shall include a pictorial design of the Swimming Pool Enclosure which includes, at a minimum, the height of the fence and the colors of all materials. The Swimming Pool Enclosure:

- a. may not exceed six feet (6') in height;
- b. may not include, as part of the design, any aspect or feature which would allow a child to climb on, up or over the fence;
- c. may consist of black metal frames; and
- d. may consist of clear plastic panels or black transparent mesh.

The Owner is solely responsible, to the exclusion of the Association, to ensure that all aspects of the Swimming Pool Enclosure function properly to effectuate its intended purpose as a safety measure to prevent accidental drownings of children.

L-C-7 STANDBY ELECTRIC GENERATORS. Texas statutes presently render null and void any restriction in the Declaration which prohibits the installation of a standby electric generator on a residential Lot. The policy is adopted in lieu of any express prohibition against a standby electric generator, or any provision regulation such matters which conflict with Texas law, as set forth in



the Restrictions. A standby electric generator may not be installed upon or within Common Area properties or any area which is owned or maintained by the Association. An Owner may submit plans for and install a standby electric generator upon written approval by the ACC. All Owners installing a standby electric generator shall comply as follows.

A standby electric generator means a device that converts mechanical energy to electrical energy and is: (1) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen; (2) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure; (3) connected to the main electrical panel of a Townhome by a manual or automatic transfer switch; and (4) rated for a generating capacity no greater than thirty (30) kilowatts.

L-C-7.1 APPROVAL REQUIRED. As part of the installation and maintenance of a standby electric generator on an Owner's Lot, an Owner may submit plans for and install the standby electric generator (the "Standby Electric Generator") upon written approval by the ACC. All Owners implementing a Standby Electric Generator shall comply with the following.

L-C-7.2 PROCEDURES AND REQUIREMENTS

- (a) APPROVAL APPLICATION. To obtain ACC approval to install a Standby Electric Generator, the Owner shall provide the ACC with the following information: (i) the proposed site location of the Standby Electric Generator on the Owner's Lot and (ii) a description of the Standby Electric Generator, including screening materials. The ACC is not responsible for: (i) errors or omissions in the Standby Electric Generator Application submitted to the ACC for approval; (ii) supervising installation or construction to confirm compliance with an approved Standby Electric Generator Application or (iii) the compliance of an approved application with Applicable Law.
- (b) APPROVAL PROCESS. The decision of the ACC will be made within a reasonable time, or within the time period otherwise required by the Restrictions.
- (c) APPROVAL CONDITIONS. Unless otherwise approved in advance and in writing by the ACC, each Standby Electric Generator Application and all Standby Electric Generators to be installed in accordance therewith must comply with the following:
  - i. Standby Electric Generators may not be installed or operated prior to approval by the Association pursuant to the Association's usual and customary policies and procedures set forth in the Restrictions.
  - ii. Standby Electric Generators shall be installed and maintained in compliance with the manufacturer's specifications and applicable governmental health, safety, electrical, and building codes.
  - iii. All liquefied petroleum gas fuel line connections shall be installed in accordance with rules and standards promulgated and adopted by the Railroad Commission of Texas and other applicable governmental health, safety, electrical, and building codes.
  - iv. All fuel (including natural gas, diesel fuel, biodiesel fuel and hydrogen fuel) and electrical connections shall be installed in

accordance with applicable governmental health, safety, electrical, and building codes.

- v. Non-integral Standby Electric Generator fuel tanks shall be installed and maintained to comply with applicable municipal zoning ordinances and governmental health, safety, electrical, and building codes.
- vi. Any Standby Electric Generator and its electrical lines and fuel lines shall be maintained in good condition.
- vii. Any Standby Electric Generator, including its components, electrical lines, and fuel lines, shall be repaired, replaced, or removed if it becomes deteriorated or unsafe.
- viii. Standby Electric Generators shall be tested only between the hours of 9:00 a.m. and 6:00 p.m., and only consistent with the manufacturer's recommendations.
- ix. Other than testing, Standby Electric Generators shall not be used to generate all or substantially all of the electrical power to a Townhome, except when utility-generated electric power to the Townhome is not available or is intermittent due to other causes other than nonpayment for utility service to the Townhome.
- x. Standby Electric Generators shall not be placed in the front yard of any Townhome.
- xi. A Standby Electric Generator shall be screened if it:
  - (A) is visible from the street faced by the Townhome;
  - (B) is located in an unfenced side or rear yard of a Townhome and is visible either from an adjoining Townhome or from adjoining property owned by the Association; or
  - (C) is located in an unfenced side or rear yard fenced by a wrought iron or residential aluminum fence and is visible through the fence either from an adjoining Townhome or from adjoining property owned by the Association.
- xii. Standby Electric Generators shall not be placed on property owned or maintained by the Association or owned in common by the Association's members, and no portion of the Generator may encroach on adjacent properties.
- xiii. Standby Electric Generators may be installed only with advance approval of the ACC subject to these guidelines.
- xiv. All electrical, plumbing, and fuel line connections must be installed only by licensed contractors. Licensed craftsmen must be used where required by law. Permits must be obtained where required by law.

(d) APPROVAL. Each Owner is advised that if the Standby Electric Generator Application is approved by the ACC, installation of the Standby Electric Generator must: (i) strictly comply with the Standby Electric Generator Application; (ii) commence within thirty (30) days of approval; and (iii) be diligently prosecuted to completion. If the Owner fails to cause the Standby Electric Generator to be installed in accordance with the approved Standby Electric Generator Application, the ACC may require the Owner to: (i) modify the Standby Electric Generator Application to accurately reflect the Standby Electric Generator installed on the property; or (ii) remove the Standby Electric Generator and reinstall the

landscaping in accordance with the approved Standby Electric Generator Application. Failure to install Standby Electric Generator in accordance with the approved Standby Electric Generator Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of this Declaration and may subject the Owner to fines and penalties. Any requirement imposed by the ACC to resubmit a Standby Electric Generator Application or remove and relocate Standby Electric Generator in accordance with the approved Standby Electric Generator Application shall be at the Owner's sole cost and expense.

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