

PART THREE: ASSOCIATION OPERATIONS

ARTICLE 9 PROPERTY MANAGEMENT

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of the Community. This Article establishes the Association's obligation to accept property that the Declarant designates as Common Area or Limited Common Area and to maintain, operate, and insure it, for the benefit of the Community or, in the case of Limited Common Area, for the benefit of the Units it serves..

9.1. Acceptance and Control of Association Property.

(a) ***Transfers and Conveyances by Declarant.*** The Declarant and its designees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Declarant's written request, the Association shall reconvey to the Declarant, or any Declarant Affiliate or Builder, any unimproved real property that the Declarant, Declarant Affiliate, or Builder, as applicable, originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

The Declarant shall have the right to convey any property to the Association as Common Area subject to easements permitting persons who are not members of the Association to use and enjoy such Common Area upon payment to the Association of reasonable use fees.

The Declarant may also transfer and assign to the Association, by this Declaration or by separate assignment, any continuing obligations and responsibilities under development agreements or conditions of development approvals relating to Heritage Trails, including obligations to pay annual fees for library services and any obligation to post or maintain maintenance bonds on improvements within public rights-of-way or other portions of the Area of Common Responsibility. The Association shall accept, assume, and fulfill all such obligations and responsibilities as the Declarant shall assign to it.

(b) ***Management and Control.*** The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

9.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

- (a) the Common Area and all improvements thereon; and
- (b) any private streets or alleys within the Community; and
- (c) landscaping lying between the eastern boundary of the Community and the nearest curb of the public right-of-way abutting the eastern boundary of the Community, to the extent that the same is not the responsibility of the City or in the Board's judgment is not maintained by the City to the Community-Wide Standard; and
- (d) street identification signs, traffic and directional signs, and community identification signs, installed in public rights-of-way within the Community, as well as any poles on which such signs are mounted, to the extent the same are not the responsibility of the City); and
- (e) street lights installed within public rights-of-way within the Community, unless they are the responsibility of the City or electric service provider; and
- (f) such portions of any additional property within or adjacent to the Community as may be specified by the Declarant, this Declaration, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on, the Association; and
- (g) any property and facilities that the Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its members. The Declarant shall identify any such property and facilities by written notice to the Association and they shall remain part of the Area of Common Responsibility until the Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

The Association shall specifically be authorized to enter into agreements with the City of Lewisville for the sharing of maintenance responsibility and/or costs associated with any property or services which the Board deems to benefit the Association and its members.

9.3. Discontinuation of Operation.

The Association shall maintain the Common Area facilities in continuous operation unless the Declarant, during the Development and Sale Period, and Members entitled to cast at least 67% of the total votes in the Association, consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall also require the approval in writing of at least 67% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Common Area is assigned. This section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, nor to preclude temporary closures or interruptions in operation, as the Board may determine appropriate to perform cleaning, maintenance or repairs.

9.4. Restoring Damaged Improvements.

In the event of damage to or destruction of any portion of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims; provided, the Board may use its judgment in determining whether to file an insurance claim or repair the damage out of available funds in order to avoid deductibles and potential negative impact on the Association's claims history. Whether or not the Board elects to file a claim, the Board shall obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements unless:

- (a) this Declaration has terminated pursuant to Section 21.1;
- (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety; or
- (c) the Declarant, during the Development and Sale Period, and Members entitled to cast at least 67% of the total votes in the Association, or in the case of damage or loss to Limited Common Area, Owners of at least 67% of the Units to which such Limited Common Area is assigned, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed, except that nothing herein shall limit the contractual rights of any holder of a deed of trust encumbering the Common Area to participate in such determination under the terms of such deed of trust or any security agreement referenced therein.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The insurance proceeds attributable to any Units or Limited Common Areas that are not rebuilt shall be distributed to the Owners of the damaged Units or the Units to which such Limited Common Areas were assigned, or their respective lien holders, as their interests may appear, in proportion to their relative liability for Association expenses. The Association shall retain and place in a capital improvements account any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

ARTICLE 10 PROVISION OF SERVICES

In addition to its property management role, the Association is a vehicle for providing services for the benefit of the Community at large and individual Units. This Article describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

10.1. Provision of Services to Units.

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Declarant or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or only to Units which have been improved with a completed dwelling and are occupied or have been conveyed to a Person other than the Declarant or a Builder ("**Occupied Units**"), or it may offer various services at the option of each Owner, or any of the foregoing. By way of example and not limitation, such services might include such things as cable television and internet service, collection of trash and recyclables, and pest control services.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as part of the Base Assessment or as a Specific Assessment levied pursuant to Article 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

10.2. Community Technology.

Without limiting the generality of Sections 10.1 and 10.2, the Declarant is specifically authorized to provide, or to enter into and assign to the Association or to cause the Association to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, telephone, and security monitoring), and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("**Technology Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Technology Systems as the Declarant or the Board determines appropriate. The Association shall have no obligation to utilize any particular provider(s).

ARTICLE 11

ASSOCIATION INSURANCE

The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This Article describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

11.1. Required Coverages.

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" for all insurable improvements on:

(i) the Common Area; and

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty, except that insurance on Units shall be subject to the terms of Section 6.4.

The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its members for damage or injury caused by the negligence of the Association or any of its members, employees, or agents while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(c) If the Association has employees, workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Automobile (hired and non-owned) liability and physical damage insurance;

(e) Directors and officers liability coverage with a minimum limit of \$1,000,000.00 per occurrence; and

(f) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in Texas.

In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

11.2. Deductibles.



THE BOARD MAY HOLD ANY PERSON WHO CAUSES DAMAGE TO INSURED IMPROVEMENTS RESPONSIBLE FOR SUCH DAMAGE, AS WELL AS THE INSURANCE DEDUCTIBLE PAYABLE ON ANY INSURANCE CLAIM RELATED TO SUCH DAMAGE.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment pursuant to Section 12.4. The Association shall have no duty to file an insurance claim and nothing herein shall be construed to relieve the person responsible for the damage from liability for his or her actions or the full amount of the resulting damages.

11.3. Policy Requirements.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner. The Association may charge to the requesting Owner any costs which it incurs for issuance of such certificate upon request of the Owner, which costs may be assessed against the Owner and the Owner's Unit as a Specific Assessment pursuant to Section 12.4.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Texas which satisfies the requirements of the Federal National Mortgage Association ("Fannie Mae"), or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its Members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

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

(d) contain an inflation guard endorsement;

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

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a member);


(g) provide a waiver of subrogation against any Owner or household member of an Owner;

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation; and

(i) satisfy any insurance requirements imposed by the Federal Home Loan Mortgage Corporation ("Freddie Mac") on planned unit developments.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners (as a class) as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

 ***SUBROGATION IS A LEGAL CONCEPT BY WHICH ONE PERSON IS SUBSTITUTED IN THE PLACE OF ANOTHER WITH RESPECT TO A LAWFUL CLAIM OR RIGHT. FOR EXAMPLE, ONCE THEY HAVE PAID A CLAIM BY AN INSURED PARTY, INSURANCE COMPANIES GENERALLY HAVE THE RIGHT TO STEP INTO THE SHOES OF THE INSURED PARTY AND SUE ANYONE THAT THE INSURED PARTY COULD HAVE SUED.***

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

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

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

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

11.4. Insurance Premiums.

Except as otherwise provided in Section 6.4 with respect to insurance on Units, premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Limited Common Areas shall be assessed solely against the Units to which such Limited Common Area is assigned, as provided in Section 12.2(c).

ARTICLE 12 ASSOCIATION FINANCES

This Article provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this Article authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this Article.

12.1. Association Expenses.

(a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**" Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate, but shall not include Limited Common Expenses as defined in Section 12.1(b).

Common Expenses shall not include any expenses incurred during the Declarant Control Period for new development or original construction costs unless Members entitled to cast a majority of the Units owned by persons other than the Declarant approve such expenditure. This approval requirement shall not apply to payments due under any leases of capital improvements which are commonly leased in lieu of purchasing, such as street lights.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Declaration, any Supplement, or any other recorded covenants or agreements.

(b) **Limited Common Expenses.** All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of Limited Common Areas, including any operating reserve or reserve for repair and replacement of Limited Common Areas, are considered "**Limited Common Expenses.**"

12.2. Budgeting for and Allocating Association Expenses.

(a) **Preparation of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year ("**General Budget**"). In addition, the Board shall prepare a separate budget for each Limited Common Area (or Limited Common Areas of the same type) reflecting the estimated Limited Common Expenses that the Association expects to incur with respect to such Limited Common Area(s) in the coming year ("**Limited Common Area Budget**").

The estimated expenses in each budget shall include, in addition to any operating reserves, a contribution to a reserve fund, in such amount as the Board determines appropriate pursuant to this subsection, for repair and replacement of any capital items to be maintained by the Association as a Common Expense or as a Limited Common Expense, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required, if any, to provide adequate funding for repairs needed to extend the useful life of each asset and/or replace each

asset at the end of its useful life. In determining the amount of reserve contribution to be included in the General Budget and Base Assessment levied thereunder pursuant to subsection (b) below, the Board may also consider reserve funding provided from other sources, including such amounts, if any, as may be collected pursuant to Section 12.9 and 12.11 and directed to such reserve account.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments or Limited Common Assessments, as applicable, pursuant to subsections (b) and (c).

(b) *Calculation of Base Assessments.* The total budgeted Common Expenses, less any income anticipated from sources other than assessments against the Units, shall be allocated equally among all Units subject to assessment under Section 12.5 and levied as a "**Base Assessment**," subject to the provisions of subsection (e), except that Common Expenses related to maintenance, repairs, replacement and insurance on Units shall be allocated equally among and assessed solely to Units as to which the Association's obligations have commenced under Section 6.2 and Section 6.4(a), as provided therein.

(c) *Calculation of Limited Common Assessments.* The total Limited Common Expenses under any budget for Limited Common Areas shall be allocated among all Units subject to assessment under Section 12.5 to which such Limited Common Area(s) are assigned and levied as a "**Limited Common Assessment**," subject to the provisions of subsection (e). Unless otherwise specified in any Supplement applicable to a particular Limited Common Area, Limited Common Assessments shall be set at a uniform rate per Unit subject to assessment under this subsection (c), except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All amounts the Association collects as Limited Common Assessments shall be held in trust for and expended solely for the benefit of the Limited Common Area(s) for which they were collected and shall be accounted for separately from the Association's general funds.

(d) *Declarant's Subsidy Option.* The Declarant and Builders, with the consent of the Declarant, may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any assessments or amounts paid under Section 12.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Declarant or Builder paying the subsidy, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the income portion of the budget and, unless otherwise stated in the budget or notes accompanying the same, shall be treated as an advance against future assessments, if any, due from the Declarant or the Builder paying the same. Payment of such subsidy in any year shall not obligate the Declarant or any Builder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant or Builder paying the subsidy.

(e) *Notice of Budget and Assessment; Right to Disapprove.* The Board shall send a copy or summary of each applicable budget, together with notice of the amount of the Base Assessment and any Limited Common Assessment to be levied pursuant to such budgets, to each Owner at least 30 days prior to the due date of the assessments to be levied pursuant to such budget. The General Budget shall automatically become effective unless disapproved at a meeting by Members entitled to cast at least 75% of the total votes in the Association and by the Declarant Member, if such exists. Each Limited Common Area Budget shall

automatically become effective unless disapproved at a meeting by Owners of at least 67% of the Units subject to assessment thereunder, and by the Declarant Member, if such exists, except that the right to disapprove a Limited Common Area budget shall not apply to any item which the Governing Documents require to be assessed as a Limited Common Expense.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the General Budget, on petition of the Members as provided for special meetings in the By-Laws, and in the case of a Limited Common Area Budget, on petition of Owners of at least 2/3 of the Units to which such Limited Common Area is assigned. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

(f) **Budget Revisions.** The Board may revise the budget and adjust the Base Assessment or Limited Common Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (e) above.

12.3. Special Assessments.

The Association may levy "**Special Assessments**" to cover Common Expenses or Limited Common Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Declaration, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units. Any Special Assessment for Limited Common Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units on which such Special Assessment is to be levied and shall be allocated in the same manner as Limited Common Assessments under Section 12.1(c). In addition, as long as the Declarant Membership exists, any Special Assessment shall also be subject to the Declarant's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

12.4. Specific Assessments.

The Association may levy "**Specific Assessments**" against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the owner thereof pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service;

(b) in the case of an Occupied Unit, to cover the charges for services provided to all Occupied Units pursuant to any bulk service or similar agreement which the Association has entered into pursuant to Section 10.1;

(c) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior

written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (c);

(d) to cover costs incurred in performing the Association's responsibilities with respect to maintenance, repair and replacement of portions of Units which are the Association's maintenance responsibility under Section 6.2(a);

(e) to cover any insurance which the Association maintains for a Unit pursuant to Section 6.4(a) and any deductible assessed against the Owner of Unit pursuant to Section 11.2; and

(f) to cover any other amounts that the Governing Documents authorize the Association to charge to a particular Owner or levy against any particular Unit.

12.5. Authority to Assess Owners; Time of Payment.

(a) The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. Except as otherwise provided in Article 6 with respect to assessments for maintenance and insurance on Units and in Section 12.6(b) with respect to Units owned by the Declarant and certain Builders, the obligation to pay assessments shall commence as to each Unit on the first day of the month following the date on which the Unit is made subject to this Declaration or the effective date of the Association's first General Budget, whichever is later. The first annual Base Assessment and Limited Common Assessment, if any, levied on a Unit which has been made subject to this Declaration after assessments have been levied on other Units shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

(b) Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Limited Common Assessment shall be due and payable in advance on the first day of each fiscal year.

(c) If any Owner is delinquent in paying any assessments or other charges levied on such Owner's Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately. However, if requested by the delinquent Owner, the Board shall establish an alternative payment schedule by which the Owner may make payments to the Association to satisfy the delinquency over a period of not less than three months nor more than 18 months from the date of such Owner's request without accruing additional monetary penalties (reasonable costs associated with administering the payment plan or interest are not considered monetary penalties hereunder), except that the Association shall not be required to enter into a payment plan with an Owner who has defaulted under the terms of a previous payment plan entered into within the preceding two years. The Board shall adopt and record guidelines for establishing the payment schedule under an alternative payment plan pursuant to this Section. It shall be a condition of any alternative payment plan that the Owner keep current on all assessments accruing after the date of commencement of the alternative payment plan. If an alternative payment plan is requested and agreed to by a delinquent Owner, the Association shall not sue to collect any delinquent amounts or to foreclose its lien under Section 12.7 so long as the Owner is not in default under the terms of such alternative payment plan.

(d) Payments received from an Owner by the Association shall be applied to the amounts owed by such Owner in the following order of priority:


- (i) first to delinquent assessment;
- (ii) then to any current assessment;
- (iii) then to any attorney's fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure;
- (iv) then to any other attorney's fees incurred by the Association which the Association is entitled to charge to such Owner's account;
- (v) then to any fines assessed by the Association against such Owner or the occupants of such Owner's Unit; and
- (vi) then to any other amount owed by such Owner to the Association.

Notwithstanding the above, if the Owner is in default under a payment plan entered into pursuant to subsection (c) at the time the Association receives a payment from an Owner, the Association shall not be required to apply the payment in the order of priority specified herein. However, in applying the payment, a fine assessed by the Association may not be given priority over any other amount due.

12.6. Obligation for Assessments.

(a) *Personal Obligation.* By accepting title to a Unit or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Texas law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full; provided, an Owner shall not be liable for fees of a collection agent retained by the Association except as provided in Tex. Prop. Code §209.0064. Upon a transfer of title to a Unit, the new Owner shall be jointly and severally liable with the previous Owner for any assessments and other charges due at the time of conveyance, except as otherwise provided in Section 12.7(c).

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Limited Common Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

 ***BY TAKING TITLE TO A UNIT IN THE COMMUNITY, EACH OWNER AGREES TO PAY ALL ASSESSMENTS LEVIED AGAINST SUCH OWNER'S UNIT PURSUANT TO THIS DECLARATION. IF THE OWNER DOES NOT PAY ON TIME, THAT OWNER WILL BE CHARGED LATE FEES AND INTEREST ON ALL PAST DUE AMOUNTS. OWNERS MAY NOT CLAIM A REDUCTION IN THEIR ASSESSMENTS DUE TO ACTION OR INACTION BY THE ASSOCIATION.***

No Owner may exempt himself or herself from liability for assessments due hereunder by non-use of Common Area or any Limited Common Area, abandonment of such Owner's Unit, or non-use of services provided to all Units. The obligation to pay such assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required

of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(b) *Declarant's and Builders' Financial Obligations to Association.* Notwithstanding anything to the contrary in this Declaration, the Declarant and any Builder who purchases Units from the Declarant shall not be liable for assessments for Common Expenses on any Units it owns during any fiscal year for which it has elected to fund "Excess Common Expenses" as defined herein. The Declarant shall be deemed to have elected to fund Excess Common Expenses for any fiscal year or partial fiscal year during the Declarant Control Period in which it owns Units, unless it gives written notice to the Association, at least 10 days prior to the Board's adoption of the General Budget for such fiscal year, of its election to pay assessments on its unsold Units. A Builder may elect to fund Excess Common Expenses in lieu of paying assessments for Common Expenses for any fiscal year or partial fiscal year during or after the Declarant Control Period by written notice to the Association at least 10 days prior to the Board's adoption of the General Budget for such year.

"Excess Common Expenses" refers to the amount by which Common Expenses due and payable by the Association during a fiscal year, other than expenses related to maintenance, repairs, replacement and insurance on Units ("Unit Expenses") and contributions to reserve funds, exceeds: (i) all assessments for Common Expenses received and receivable from Owners subject to assessment during such fiscal year; plus (ii) any unrestricted income received by the Association during the period which is available to pay such expenses, less (iii) "Restricted Amounts" as defined herein. The term "Restricted Amounts" refers to that portion of the Base Assessments and any Special Assessments for Common Expenses collected by the Association during such fiscal year which represents the share of budgeted contributions to reserves and the share of Unit Expenses allocated under the General Budget to the Units for which such assessments were paid. Amounts collected and expended pursuant to Section 12.11 shall not be considered in the foregoing calculation of Excess Common Expenses.

The estimated Excess Common Expenses, if any, for each fiscal year or partial fiscal year shall be set forth in the General Budget and allocated among those entities which have elected to fund Excess Common Expenses for such fiscal year pursuant to this Section (the "Participants"), based upon the number of Units owned by each on the first day of the period covered by such General Budget. Within 10 days after notice from the Association of a cash shortfall during such year, each of the Participants shall pay to the Association a share of such shortfall in the same proportion as the allocation of the estimated Excess Common Expenses for such year. Within 60 days after the close of the fiscal year, the Association shall calculate the actual Excess Common Expenses for such year, provide such calculation to the Participants, and the Association shall refund any overpayments to the Participants or the Participants shall pay any additional amounts due, as applicable. Each Participant's obligations hereunder shall be the personal obligation of the Participant, shall constitute a Specific Assessment against all Units owned by the Participant, and the full amount thereof shall be secured by the Association's lien under Section 12.7 on each Unit owned by the Participant.

Regardless of the Declarant's election under this section, any of the Declarant's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

(c) *Assessment Statement.* Within seven days after receipt of a written request from any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Association's registered agent or

designee, the Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Unit, the amount of current periodic assessments, and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items.

The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Association as to Persons who rely thereon in good faith.

12.7. Lien for Assessments.

(a) ***Existence of Lien.*** The Association shall have a lien against each Unit to secure payment of assessments due hereunder, as well as interest, late charges (subject to the limitations of Texas law), and costs of collection (including attorneys' fees and expenses). Such lien shall be superior to all other liens except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) ***Enforcement of Lien.*** Subject to Section 12.5 and this subsection (b), the Association's lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Tex. Prop. Code Section 51.002, as it may be amended, in like manner of any deed of trust on real property, after compliance with the procedures set forth in Chapters 51 and 209 of the Tex. Prop. Code, if applicable. Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Section 51.002, as it may be amended. The Association shall not foreclose its lien if the debt secured by the lien consists solely of (i) fines or attorneys' fees associated with fines; or (ii) charges related to the compilation, production, or reproduction of information requested pursuant to the Owner's right to inspect the Association's books and records under the By-Laws.


The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association.

Subject to Section 12.5, the Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) ***Effect of Sale or Transfer.*** Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments, except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish the Association's lien for assessments which became payable prior to such sale or transfer. A purchaser at a foreclosure sale or subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such foreclosure. Such unpaid

assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

Any such sale or transfer pursuant to foreclosure shall not relieve the purchaser or transferee of the Unit from liability for, nor the Unit so sold or transferred from the lien of, any assessments thereafter becoming due.

 ***IF AN OWNER DOES NOT PAY THE ASSESSMENTS LEVIED BY THE ASSOCIATION ON TIME, THE ASSOCIATION MAY FORECLOSE ITS LIEN ON THE OWNER'S UNIT, CAUSING IT TO BE SOLD TO PAY THE PAST DUE ASSESSMENTS. THE ASSOCIATION MAY ALSO SUE THE OWNER IN COURT TO RECOVER PAST DUE ASSESSMENTS.***

12.8. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Limited Common Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant or a Declarant Affiliate as are included in the Area of Common Responsibility;

(b) Any property owned by the City or dedicated to and accepted by any governmental or quasi-governmental authority or public utility for public purposes.

12.9. Capitalization of Association.

The first Owner of each Unit other than the Declarant, a Declarant Affiliate, or a Builder shall pay to the Association, upon taking title to the Unit, an amount equal to 20% of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment, and any Limited Common Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title for its use in covering initial start-up expenses, operating expenses, and other expenses it incurs pursuant to this Declaration and the By-Laws which, in the Board's discretion, may include funding of capital reserves for repairs and replacements to property which the Association maintains as a Common Expense for the primary benefit of the Members.

12.10. Use and Consumption Fees.

The Board may charge use and consumption fees to any Person electing to use Association services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

12.11. Enhancement Fees Upon Transfer of Title.

(a) **Authority.** As an additional funding source, the Board may establish and collect an Enhancement Fee upon each transfer of title to a Unit, except such transfers as are exempt under Section 12.11(d). The fee shall be in an amount determined pursuant to Section 12.11(c), shall be charged to the seller of the Unit and shall be payable to the Association at the closing of the transfer. The fee shall constitute an assessment against the Unit being transferred and shall be secured by the Association's lien for assessments under Section 12.7. Each Owner shall notify the Association's Secretary or designee at least seven days

prior to the scheduled closing and provide the name of the buyer, the date of title transfer, and other information the Board may reasonably require.

(b) **Purpose.** Enhancement Fees shall be placed in a segregated account and used exclusively to provide funding for reserves for capital repairs and replacements to property which the Association maintains as a Common Expense for the primary benefit of the Members and activities, programs, and other uses, as the Board may determine appropriate, which enhance and provide a "direct benefit" to the Community, as the term "direct benefit" is defined in rules of the Federal Housing Finance Agency at 12 C.F.R. Part 1228.1, as it may be amended. For example, Enhancement Fees, or such portion thereof as are not used to fund reserves, might be used to fund social activities conducted on Common Area or other property primarily used by residents of the Community. Enhancement Fees shall not be used to engage in any political activity, including lobbying, protesting, or taking or asserting a position in any zoning matter. The Board may appoint a Lifestyle Committee in accordance with the By-Laws to develop a budget for and make recommendations to the Board as to use of any Enhancement Fees which the Board allocates for purposes other than funding reserves for capital repairs and replacements hereunder.

Subject to this Section 12.11, the Board's judgment in determining the allocation and expenditure of such funds shall be final so long as such judgment is exercised in good faith, and the Association, its directors, and officers shall not be liable to any Person for any error in judgment or any action or inaction relating to the expenditure of such funds, except that nothing in this Section shall relieve any person of liability for gross negligence or willful misconduct in the handling of such funds.

(c) **Fee Determination.** The Enhancement Fee shall be in an amount equal to the annual Base Assessment levied by the Association pursuant to Section 12.2 for the year in which the transfer of title occurs. This amount shall be in addition to, not in lieu of, the annual Base Assessment and any Limited Common Assessment levied on the Unit and shall not be applied to payment of such assessments.

(d) **Exempt Transfers.** Notwithstanding the above, no Enhancement Fee shall be levied upon transfer of title to a Unit:

- (i) by or to the Declarant or a Declarant Affiliate;
- (ii) by a Builder designated by the Declarant who held title solely for purposes of development and resale;
- (iii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;
- (iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership or beneficial interest in such entity, the Enhancement Fee shall become due;
- (vi) to an institutional lender pursuant to the terms of its Mortgage or upon foreclosure of its Mortgage, and to the first purchaser of the Unit from such institutional lender;
- (vii) to a person who purchased the Unit at the foreclosure sale upon foreclosure of a Mortgage held by an institutional lender; or