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COMMUNITY DECLARATION

FOR

HERITAGE TRAILS

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B	Land Subject to Annexation
C	Initial Rules
D	Certificate of Formation of Heritage Trails Homeowners Association, Inc.
E	By-Laws of Heritage Trails Homeowners Association, Inc.
F	Initial Architectural Guidelines

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COMMUNITY DECLARATION FOR HERITAGE TRAILS

This Community Declaration for Heritage Trails (as it may be amended, the "**Declaration**") is established by Lewisville Summit, LLC, a Texas limited liability company, on behalf of itself, its successors, successors-in-title and assigns (with its successors and assigns, the "**Declarant**").

BACKGROUND STATEMENT

Heritage Trails is a townhome community located in Denton County, Texas, within the City of Lewisville. The Declarant has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of property within Heritage Trails.

The Declarant has organized Heritage Trails Homeowners Association, Inc., a Texas nonprofit corporation (the "**Association**"), to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration and to own, operate, and/or maintain various common areas and community improvements in Heritage Trails, as the Declarant may designate in accordance with this Declaration. The owner of each lot or home within Heritage Trails is automatically a member of the Association, as further described in this Declaration.

This document provides for automatic and mandatory membership in a property owners association as defined in Tex. Prop. Code §202.001. This document does not, and is not intended to, create a condominium under Texas law.

DECLARATION

The Declarant, as the owner of the property described in **Exhibit "A"** to this Declaration, hereby declares that such property and any additional property made subject to this Declaration in the future by amendment or supplement, shall constitute the "**Community**" known as "**Heritage Trails**," as such terms are used in this Declaration. This Declaration shall run with the title to such property, shall govern the development and use of the Community, and shall be binding upon and inure to the benefit of the Declarant, the Association, and the current and future owners of any portion of the Community, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter holds any legal, equitable, or beneficial interest in any portion of the Community. This Declaration shall also be binding upon the Association, its successors and assigns.

PART ONE: INTRODUCTION TO THE COMMUNITY

ARTICLE 1 GOVERNING DOCUMENTS

The governing documents for the Community set forth the rights and obligations of the owners and occupants of property in the Community as well as the rights and responsibilities of the Declarant and the Association. The governing documents also contain certain limitations on the owners' property rights for the benefit of the Community as a whole.

1.1. Scope and Applicability.

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Declaration as the "**Governing Documents**," include this Declaration and the other documents described in Table 1.3, as they may be amended. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents. All owners and occupants shall be held accountable and liable for the actions of their tenants, guests, and invitees.

1.2. Conflicts and Ambiguities.

If there are conflicts between any of the Governing Documents and applicable federal or state law, federal or state law shall control, as applicable. If there are conflicts between or among any of the Governing Documents, then the Declaration, the Certificate of Formation, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants (or the rules or policies adopted pursuant to any such additional covenants) recorded on any property within the Community after the date such property is made subject to this Declaration, the Governing Documents shall control.

The Governing Documents use diagrams, tables, and keynotes (text set apart in boxes with "key" icons) to emphasize or explain concepts and highlight certain key points. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

1.3. Definitions.

Capitalized terms used in the Governing Documents have the meaning ascribed to them in the paragraph where they first appear in bold print. An index to defined terms may be found following the

Table of Exhibits at the beginning of this document. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

GOVERNING DOCUMENTS	
Declaration: (recorded)	this Community Declaration for Heritage Trails, which creates obligations that are binding upon the Association and all current and future owners of property in the Community
Supplement: (recorded)	a recorded Supplement to this Declaration, which may submit additional property to this Declaration, create easements over the property described in the Supplement, impose additional obligations, restrictions, or easements on such property, designate Limited Common Areas, as defined herein, or any of the foregoing
Certificate of Formation: (filed with the Texas Secretary of State; copy attached as <u>Exhibit "D"</u>)	the Certificate of Formation of Heritage Trails Homeowners Association, Inc., as it may be amended, which establishes the Association as a nonprofit corporation under Texas law
By-Laws: (Board adopts; copy attached as <u>Exhibit "E"</u>)	the By-Laws of Heritage Trails Homeowners Association, Inc. adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc.
Architectural Guidelines: (Declarant adopts; initial set attached as <u>Exhibit "F"</u>)	the architectural and aesthetics standards adopted pursuant to Article 5, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units
Rules: (initial set attached as <u>Exhibit "C"</u>)	the rules of the Association adopted pursuant to Article 7, which regulate use of property, activities, and conduct within the Community
Board Resolutions: (Board adopts)	the resolutions adopted by the Association's board of directors establishing rules, policies, and procedures for internal governance and for operation and use of property which the Association owns or controls

Table 1.3 - Governing Documents

1.4. Interpretation of Certain References.

Community-Wide Standard. Where the Governing Documents require compliance with the "Community-Wide Standard," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community; or (b) the minimum standards described in this Declaration, the Architectural Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Article 5). The Community-Wide Standard may or may not be set out in writing. The Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Community matures.

Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Discretion and Determination. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Maintenance. All references in this Declaration to "maintenance" shall refer to maintenance, repair, and replacement, unless otherwise specified.

Person. References in the Governing Documents to a "Person" or "Persons" shall refer to an individual or to a corporation, partnership, limited liability company, trust, or other legal entity.

Notice. All references in this Declaration to "notice" shall refer to notice delivered in accordance with the provisions for notice set forth in the By-Laws.

Recording. All references in the Governing Documents to a "recorded" legal instrument, or to "recordation" or the "recording" of a legal instrument, shall refer to an instrument filed in, or the filing of a legal instrument in, the Office of the County Clerk of Denton County, Texas or such other place designated as the official location for filing documents affecting title to real estate in Denton County in order to make them a matter of public record.

ARTICLE 2 COMMUNITY ADMINISTRATION

Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Declarant, the Association, the owners, the builders, and others have a role in the functioning of the Community and in helping to fulfill that vision. This Article identifies these stakeholders and describes their roles in administering the Community.

2.1. The Declarant.

The Declarant has established the vision for Heritage Trails and for the Community and, through the Governing Documents, has set forth the principles that will guide the Community during the development and sale period and thereafter. The Declarant's proposed plan of development encompasses all of the property described in Exhibit "A" and may include property described in Exhibit "B" (the "**Development Plan**"). However, the Declarant is not obligated to submit property shown on the Development Plan to this Declaration. In addition, the Declarant may submit property to this Declaration that is not shown on the Development Plan.

The Declarant has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Declarant may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Declarant, any "Declarant Affiliate," or any "Builder" (defined in Section 2.4) owns real property in the Community or has an

unexpired option to expand the Community pursuant to Article 17. A "**Declarant Affiliate**" is any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

The Declarant has reserved other rights that may be exercised only during the "**Declarant Control Period**," which is the period of time that the Declarant is entitled to appoint a majority of the members of the Association's board of directors ("**Board**"). The Declarant Control Period begins on the date this Declaration is recorded and terminates upon the first of the following to occur:

- (a) when 85% of the total number of Units permitted by applicable zoning for the property described in the Development Plan have certificates of occupancy issued thereon and have been conveyed to persons other than Builders holding title for purposes of construction and resale;
- (b) December 31, 2030; or
- (c) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

The Declarant has certain approval rights for a limited period as provided in the By-Laws after the termination of the Declarant Control Period.

The Declarant may assign its status and rights as the Declarant under the Governing Documents to any person who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

 ***THE DECLARANT RETAINS VARIOUS RIGHTS TO FACILITATE THE DEVELOPMENT AND SALE OF THE COMMUNITY, INCLUDING THE RIGHT TO APPOINT A MAJORITY OF THE MEMBERS OF THE ASSOCIATION'S BOARD OF DIRECTORS DURING THE "DECLARANT CONTROL PERIOD."***

2.2. The Association and its Board.

The Declarant has established the Association as the primary entity responsible for administering the Community in accordance with the Governing Documents. On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Texas law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers which the Governing Documents and Texas law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents, except as specifically limited in the Articles, this Declaration or the By-Laws. It may also take any action reasonably necessary to effectuate any such right or privilege. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members, and shall have no authority to institute or intervene in litigation, arbitration, or other proceedings in the name of or on behalf of any Owner or Owners pertaining to the design or construction of any improvements on a Unit.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances), and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

2.3. The Owners.

Each Person that holds record title to a "Unit" (as defined in Section 3.1) is referred to in the Governing Documents as an "**Owner.**" However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a deed of trust, mortgage, or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents. Where the Governing Documents or applicable law require notice to an Owner or member of the Association, notice given to any co-Owner of a Unit shall be deemed notice to all co-Owners of such Unit.

Every Owner has a responsibility to comply with the Governing Documents and uphold the Community standards described in Part Two of this Declaration. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in Articles 3 and 4 and in the By-Laws.

2.4. Builders.

The "**Builders**" are those Persons who purchase one or more unimproved Units to construct dwellings for resale in the ordinary course of their business. The Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, the Declarant may extend any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate.

2.5. Mortgagees.

If a Unit is made subject to a recorded deed of trust or other form of security instrument affecting title to a Unit (a "**Mortgage**"), then the holder or beneficiary of that Mortgage (a "**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Article 16.

ARTICLE 3 COMMUNITY STRUCTURE AND ORGANIZATION

The Community consists of "Units" intended for the exclusive use of the Owners or their tenants and members of their respective households, as well as property intended for common use, and may include property dedicated to the public, and parcels of land intended for further subdivision and development.

3.1. Units.

A "Unit" is a portion of the Community described as a separately numbered lot on a recorded subdivision plat and intended for development, use, and/or occupancy as a residence for a single household. However, any property conveyed to the Association as "Common Area" (as described below) shall not be considered a "Unit," even though such property may be identified as a separate lot on a recorded subdivision plat and originally intended for construction of a dwelling, and any property dedicated to the public shall not be considered a "Unit." The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on such land. A parcel of land intended for development as one or more Units shall be treated as a single Unit until a subdivision plat is recorded dividing it into more than one Unit. The subdivision and combination of Units is subject to the provisions of Section 7.1(d).

3.2. Common Areas.

(a) *Common Area.* Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "Common Area." The Common Area also includes any property that the Association holds under a lease and any easements in favor of the Association. The Declarant and others may establish and convey Common Area to the Association as provided in Section 9.1.

(b) *Limited Common Area.* Certain portions of the Common Area may be designated as "Limited Common Area" and assigned for the exclusive use or primary benefit of two or more Units. The Declarant may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Declaration. At any time during the Development and Sale Period, the Declarant may assign use of the same Limited Common Area to additional Units.

3.3. Area of Common Responsibility.

All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "Area of Common Responsibility," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way and public parks. The initial Area of Common Responsibility is described in Article 9.

ARTICLE 4 ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

The Association is an entity through which each Owner can participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

4.1. Membership.

The Association initially has two classes of membership: the Owner Membership, which is comprised of all Owners, including Builders, and the Declarant Membership, which consists solely of the Declarant.

(a) *Owner Membership.* Every Owner is automatically a "Member" of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any Common Area recreational facilities available for use by Owners.

(b) *Declarant Membership.* The Declarant holds the sole Declarant membership. The Declarant membership shall terminate two years after expiration of the Declarant Control Period, or on such earlier date as the Declarant determines and declares in a recorded instrument.

4.2. Voting.

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.8.

If there is more than one Owner of the Unit, the right to vote, consent, or grant approval for such Unit may be exercised by any of the co-Owners holding a majority of the ownership interest in the Unit determine among themselves; provided, if more than one co-Owner casts a vote for the Unit or grants consent or approval as the Owner of the Unit, and the votes, consents or approvals of such Owners are split on a particular matter, then each co-Owner may vote or give consent or approval with respect to its proportionate interest in the Unit.

PART TWO: COMMUNITY STANDARDS

ARTICLE 5

ARCHITECTURE, LANDSCAPING, AND AESTHETIC STANDARDS

The success of the Community depends in part on the cooperation of all Builders and Owners in upholding minimum standards for architecture, landscaping and aesthetics. This Article explains how those standards are established and how they are maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.

5.1. General.

All site work, landscaping, structures, improvements, modifications, and items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit, (including sports, play, and maintenance equipment, outdoor furniture and storage, and decorative items) (collectively, "**Improvements**") are subject to standards for design, development, landscaping, and aesthetics adopted pursuant to this Article ("**Architectural Guidelines**") and the approval procedures set forth in this Article, except to the extent that Tex. Prop. Code Chapter 202, this Article, or the Architectural Guidelines may otherwise provide.

No prior approval is necessary to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures; however, the Owner shall notify the Association before undertaking such activities. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of porches and any other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Declarant or its designee in its sole discretion otherwise approves.

Approval under this Article is not a substitute for any approvals or reviews required by Denton County, Texas, the City of Lewisville, Texas, or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This Article shall not apply to the Declarant's design and construction activities or to the Association's activities during the Declarant Control Period.

5.2. Design Review Authority.

(a) ***Declarant and Builders.*** The Declarant, so long as it owns any property subject to this Declaration, and thereafter a committee comprised of one representative of each Builder who owns a Unit in the Community ("**Builder Committee**"), shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings that are substantially complete and occupied or ready for occupancy. The Declarant or Builder Committee may designate one or more persons to act on its behalf in reviewing any application, .

During the period of time that the Declarant holds reviewing authority under this Article, he Declarant may establish a committee comprised of such persons as the Declarant deems appropriate (which may but need not include Builders or representatives of Builders, architects, engineers, or other professionals), to review applications and make recommendations to the Declarant of approval or disapproval. In reviewing and acting upon any request for approval, the Declarant and its designee act solely in the Declarant's interest and owe no duty to any other Person.

From time to time, the Declarant or any Builder Committee may delegate any or all of its rights under this Article to other Persons or committees, including any committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the right to revoke such delegation at any time and reassume its prior control, and (ii) the right

to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Declarant or Builder Committee has any rights under this Section 5.2(a), the jurisdiction of others shall be limited to such matters as the Declarant or Builder Committee specifically delegates.

(b) *Architectural Review Committee.* Upon any delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Declarant's and Builder's rights under Section 5.2(a), the Board shall appoint an Architectural Review Committee ("**Architectural Review Committee**" or "**ARC**") to assume jurisdiction over matters within the scope of the delegated authority or this Article, respectively. The ARC shall consist of at least three, but not more than five, persons who shall serve and may be removed and replaced in the Board's discretion. ARC members need not be Owners or representatives of Owners. The ARC may, but need not, include architects, engineers, or similar professionals. The Association may compensate ARC members in such manner and amount, if any, as the Board may determine appropriate consistent with applicable law.

During the Development and Sale Period, the ARC shall notify the Declarant or Builder Committee, as applicable, in writing within seven business days of any action (i.e., approval, partial approval, or disapproval) it takes pursuant to any delegation of authority under this Article. A copy of the application and any additional information the Declarant or Builder Committee may require shall accompany the notice. The Declarant or Builder Committee, as applicable, shall have 10 business days after receipt of such notice to veto any such action, in its discretion, by written notice to the ARC.

Unless and until such time as the Declarant or Builder Committee delegates all or a portion of its reserved rights to the ARC or termination of the Development and Sale Period, the Association shall have no jurisdiction over architectural matters.

(c) *Reviewer.* For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer.**"

(d) *Fees; Assistance.* The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application and conduct a final inspection for compliance with approved plans. The Board may include the compensation of such persons in the Association's annual operating budget.

(e) *Construction Deposit.* As a condition of approval of any application hereunder, the Reviewer may require the applicant to post a construction deposit. The Association shall be entitled to draw upon the construction deposit to cover costs which it incurs in cleaning up dirt or debris and repairing damage to any subdivision improvements or Common Areas which the Board determines, after notice to the applicant and an opportunity for a hearing in accordance with the By-Laws, is attributable to the construction activities of the applicant or its contractors, subcontractors, suppliers, or others providing goods or services in conjunction with the construction activities on the applicant's property. The applicant shall provide funds to restore the construction deposit to its original amount within 10 days after written request from the Association notifying the applicant of the amount of any disbursement from the applicant's construction deposit. Upon completion of all work in accordance with the approved plans, the applicant shall be entitled to a refund of the applicant's construction deposit (or if any portion has been applied to cover the Association's costs pursuant to this section and not restored, then the balance remaining, if any).

5.3. Guidelines and Procedures.

(a) *Architectural Guidelines.* The initial Architectural Guidelines are attached as Exhibit "F," but are subject to amendment as provided in this section. The Architectural Guidelines may contain general provisions applicable to the entire Community as well as specific provisions that vary among locations within the Community and may also include rules governing construction activities within the Community. The Architectural Guidelines are intended to provide guidance to Builders and other Owners regarding matters of particular concern to the Reviewer. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval.

The Declarant or Builder Committee, as applicable shall have sole and full authority to amend the Architectural Guidelines for so long as it has review authority under Section 5.2(a). Such right to amend the Architectural Guidelines shall continue even if reviewing authority is delegated to the ARC, unless the power to amend is also delegated to the ARC. Upon termination or delegation of the Declarant's and Builder Committee's right to amend, the ARC may amend the Architectural Guidelines with the Board's consent. No amendment shall be inconsistent with the provisions of Tex. Prop. Code Chapter 202, as it may be amended.

Amendments to the Architectural Guidelines shall apply prospectively only. They shall not require modifications to, or removal of, any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Architectural Guidelines as amended. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Architectural Guidelines less restrictive. Any amendment to the Architectural Guidelines shall be effective upon recording.

The Reviewer shall make the Architectural Guidelines, as they may be amended, available to Owners upon request.

(b) *Procedures.* Except as this Declaration or the Architectural Guidelines otherwise provide, no activities within the scope of this Article (as described in Section 5.1) may begin on any portion of the Community until a written application is submitted to and approved by the Reviewer, which application must be accompanied by plans and specifications and such other information as the Reviewer or the Architectural Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner and other applicant acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

Subject to the provisions of Tex. Prop. Code Chapter 202, as it may be amended, and this Declaration, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Article 19 or judicial review so long as they are made in good faith and in accordance with required procedures, Tex. Prop. Code Chapter 202, and applicable laws and restrictive covenants.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or

considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any ARC determination subject to the Declarant's or Builder Committee's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond in a timely manner, the applicant may notify the Reviewer in writing by certified mail, return receipt requested, demanding a response and, if the Reviewer fails to respond within 14 days after receipt of such demand, approval shall be deemed given, but only to the extent that the application is in conformance with the Architectural Guidelines. No approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted pursuant to Section 5.5.

Notwithstanding the above, while the Declarant is the Reviewer, it may dispense with the written application and approve plans and specifications for construction by any Builder pursuant to the terms of the agreement of sale between the Declarant and such Builder. Any such plans shall be deemed approved hereunder, provided that such approval is set forth in a written instrument signed by the Declarant or its authorized representative identifying the approved plans and specifications, and then subject to any conditions set forth in such instrument.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

Upon completion of all work for which approval has been granted, the applicant shall notify the Reviewer in writing that construction is complete. The Reviewer may conduct an inspection within 30 days thereafter and notify the applicant in writing as to any deviations or deficiencies noted from the approved plans. If deviations or deficiencies are noted, the applicant shall promptly take such action as the Reviewer has specified in such notice to conform the work to the approved plans.

The Reviewer may exempt certain activities from the application and approval requirements of this Article if such activities are undertaken in compliance with the Architectural Guidelines and the Community-Wide Standard.

5.4. No Waiver of Future Approvals.

The people reviewing applications under this Article will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed.

However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances.

The Reviewer may authorize variances from compliance with any of the Architectural Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. However, no variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances.

5.6. Limitation of Liability.

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they shall not create any duty to any Person. Review and approval of any application pursuant to this Article may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Declarant, the Association, its officers, the Board, any committee, and members of any of the foregoing, shall not be liable for: (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Declarant has approved or featured such contractor as a Builder; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters arising under this Article, the Association shall defend and indemnify the Board, the ARC, and the members of each, as provided in the By-Laws.

5.7. Certificate of Compliance.

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

ARTICLE 6

MAINTENANCE OF UNITS; INSURANCE AND CASUALTY LOSSES

By buying or occupying property in Heritage Trails, each Owner commits to maintain his or her Unit in a neat and attractive condition to enhance the overall aesthetic appeal of the community. This Article describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.

6.1. Maintenance by Owners.

Except to the extent that such responsibility is assigned to the Association pursuant to Section 6.2 or Section 9.2, each Owner shall maintain such Owner's Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard; provided, no Owner or occupant of a Unit shall modify the exterior or landscaping on his or her Unit without prior approval pursuant to Article 5. Responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

The Association may assume maintenance responsibility for any Unit owned by a Person other than the Declarant upon the Board's determination, pursuant to Article 8, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The Association may assess the cost of such maintenance against the benefited property as a Specific Assessment pursuant to Section 12.4.

6.2. Maintenance by Association.

(a) Scope of Services. The Association shall be responsible for the following maintenance on each Unit upon completion thereof as described in Section 6.2(b):

(i) maintenance of landscaping installed by the Builder as part of the initial construction on the Units and replacements thereof lying outside of any "Private Yard Area" (i.e., any area of a Unit enclosed by a fence or lying between the dwelling and any separate garage on the Unit), such maintenance to consist of: (A) mowing of grassed areas; (B) edging along sidewalks, driveways and shrub beds; (C) pruning of shrubbery; (D) mulching around trees and shrubs; (E) fertilizing and irrigating planted areas; (F) weed control and treating for disease and insects as the Board deems appropriate; (G) removal and replacement of dead or dying shrubbery and trees, and (H) periodic removal of leaves, branches, and similar lawn debris from landscaped areas, driveways, and sidewalks;

(ii) operation, maintenance, repair and replacement, as necessary, of any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines and time clocks, wherever located) designed to irrigate landscaping lying outside of Private Yard Areas, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or occupant of any Unit after initial conveyance of the Unit by the Builder;

(iii) maintenance, repair and replacement of the surface water drainage systems, if any, including collection drains and piping, if any;

(iv) the following maintenance of structures erected or installed by a Builder as part of the original construction on the Units and replacements thereof:

(A) repair and/or replacement, as necessary, of the shingles, flashing, felt, and roof decking of roofs of dwellings and garages, including the roofs of any porches built as part of the original construction of the dwelling or replacements thereof;

(B) cleaning, repair and replacement of gutters and downspouts;

(C) maintenance, repair and replacement of the exterior façade of the dwelling on each Unit, including siding and trim, but excluding: (i) windows, window frames, doors and door frames, except for painting or staining thereof; (ii) any skylights or other glass surfaces; (iii) exterior light fixtures; (iv) window, door and porch screens; and (v) chimneys, if any.

(D) painting or staining, as applicable, of all exterior painted or stained portions of any structures on the Unit, including any garage, garage door, exterior doors, door frames, shutters, façade on the dwelling, and any fences and gates erected or installed by the Builder and replacements thereof (such fences being referred to herein as "**Builder-Installed Fences**");

(E) reglazing and recaulking of the exterior portions of all windows and doors, but only at such time as the Association or its contractor undertakes painting of all exterior painted surfaces; the Association shall have no responsibility for maintaining glazing or caulking between paintings or for air, water, or moisture leaks or damage resulting from the need to reglaze or recaulk windows and doors more frequently, which shall be the Owner's responsibility;

(F) repair and replacement, as necessary, of any Builder-Installed Fences; and

(G) maintenance, repair and replacement of retaining walls, if any, that are not attached to dwellings; and

(H) termite treatment of all exterior walls and foundations of a dwelling and garage; provided, however, that the Association shall not be liable if such treatment proves to be ineffective; and

(I) repair of the dwelling foundation or slab, but only in the event of a slab failure affecting or threatening the foundation of multiple Units within a building (all other aspects, including repair of minor cracks resulting from natural expansion and/or contraction of soil, shrinkage during the curing of concrete, and settlement of the dwelling being the responsibility of the Unit Owner).

The Association may undertake additional exterior maintenance, repair or replacements on Units not otherwise required hereunder, but shall have no obligation to do so or, once undertaken, to continue to perform such maintenance in the future.

The Association shall not be responsible for any improvements or modifications added or made to any Unit by or on behalf of the Owner or occupant after the conveyance of the Unit to the first Owner following completion of the initial improvements thereon except as otherwise approved by the Association in writing. Approval of any modification or addition may be expressly conditioned upon the Owner assuming responsibility for maintenance, repair, and replacement of the same.

The Board shall determine the schedule upon which the Association shall provide routine periodic maintenance, such as painting, on Units for which the Association's responsibilities have commenced

hereunder. Each Owner acknowledges that cracking and staining of exterior surfaces is a common occurrence and that the Association shall have no obligation to clean, repair, or repaint such surfaces outside of its regular maintenance schedule.

Except as otherwise provided in this paragraph, all costs which the Association incurs in performing its responsibilities under this Section 6.2(a) shall be allocated equally among only those Units as to which the Association's responsibilities have commenced under Section 6.2(b) and levied as a Specific Assessment under Section 12.4. To the extent that any maintenance, repair or replacement which is the Association's responsibility hereunder is necessitated by damage or excessive wear and tear resulting from the conduct or activities of the owners or occupants of a Unit, their guests, invitees, or pets, the Association shall have the right to assess the costs which it incurs for such maintenance, repair or replacement against the Unit and the Owner thereof as a Specific Assessment pursuant to Article 12 hereof. The Association's responsibility for repairs, replacement, and debris removal necessitated by casualty events shall be limited to the extent of available insurance proceeds.

(b) Commencement of Association's Responsibilities. The Association's responsibilities under subsection (a) of this Section shall commence, as to each block of Units improved or intended to be improved with structures comprising a single building of two or more attached dwellings (a "**Townhome Block**"), at such time as the first Unit in such Townhome Block: (i) has been improved with a dwelling for which a certificate of occupancy has been issued and all landscaping and related improvements on the Unit have been completed in accordance with the plans approved pursuant to Chapter 5 of the Residential Declaration; and (ii) the Unit has either been conveyed by the Builder or actually occupied for residential purposes. Until such time, the Builder shall be responsible for all maintenance on the Units within the Townhome Block.

6.3. Maintenance and Repair of Party Walls and Similar Structures.

(a) Original Construction. Each wall, fence, driveway, or similar structure built as part of the original construction on Units which serves and/or separates any two or more adjoining Units, and any replacement thereof, shall be considered a party structure. If any necessary maintenance, repair or replacement of a party structure affects both sides of the structure, it shall be the joint responsibility of the Owners of the Units served or separated by the party structure and any such Owner may perform the necessary maintenance or repair and, within 30 days after receipt of written evidence of the total cost incurred, the other Owner(s) shall reimburse the Owner who has incurred such cost for an equal share of the reasonable cost he or she has incurred in performing such maintenance or repair.

Notwithstanding the above or anything to the contrary in this Declaration, if maintenance or repairs to a party structure are necessitated by the conduct of the Owners, occupants or guests of only one of the Units that share such party structure, then the Owner of such Unit shall be responsible for the necessary maintenance or repairs.

The right to and the obligation of contribution for party walls and similar structures between Owners, as provided in this section, shall be appurtenant to the land and shall pass to such Owner's successor-in-title.

To the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Article 19.

(b) *Fence Additions.* If an Owner installs, constructs, or erects a fence on the common boundary line between such Owner's Unit and an adjacent Unit, and the Owner of the adjacent Unit thereafter attaches another section of fence to it or otherwise makes use of such fence for the purpose of enclosing all or a portion of the adjacent Unit, then such fence shall become a party structure for the purpose of each Owner's responsibility for contributing to the maintenance, repair, and replacement of such fence. However, nothing herein shall confer any ownership interest in or right to remove any such fence on the Owner of the adjacent Unit.

(c) *Failure to Maintain.* In the event that the Owners who share a party structure fail to provide necessary maintenance or repairs to a party structure within 10 days after the date of written notice from the Association advising of the need for such maintenance or repairs, the Association shall have the right to provide the necessary maintenance or repairs and assess the costs incurred against the responsible Owners and their Units.

6.4. Insurance on Units.

(a) *Property Coverage.* Except as provided herein, the Association shall obtain and thereafter maintain a master policy of property insurance insuring all structures on the Units as to which the Association's responsibilities have commenced under Section 6.2(b), exclusive of (i) floor, wall and ceiling coverings; (ii) electrical fixtures; (iii) appliances and water heaters; (iv) cabinetry and countertops; and (v) improvements made after issuance of an initial certificate of occupancy. The Owner of each Unit shall obtain and maintain insurance on the contents of the Unit, including the items listed in clauses (i) through (v) of this paragraph, and the Owner and occupants of the Unit shall be responsible for insuring their personal property.

The insurance to be obtained by the Association under this subsection (a) shall provide coverage for "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) insuring against loss or damage due to fire, lightning, wind, smoke, hail, civil commotion (including riots), aircraft, vehicle, explosion, water, vandalism, and malicious mischief, among other things. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes, excluding foundation and excavation costs. Such policy may contain a reasonable deductible, as the Board may determine. Any Owner filing a claim under such policy shall be responsible for payment of any and all expenses up to the amount of such deductible, to the extent not covered by insurance maintained by such Owner.

Notwithstanding the above, if the Association is unable to obtain, or the Board determines by resolution not to obtain or to discontinue providing, such insurance on Units, it shall notify each Owner of a Unit in writing at least 30 days prior to the date upon which the Owner would need to have its own property coverage in effect and each Owner of a Unit shall, not later than the date set forth in the Association's notice, obtain in such Owner's own name and at such Owner's own expense, property insurance on such Owner's entire Unit with a face amount at least equal to the full replacement cost of the dwelling and other insurable improvements comprising the Unit. Such policy may provide for a reasonable deductible. However, so long as the Association is able to obtain property insurance on the structures as described in the first paragraph of this subsection(a) at approximately the same or lower cost than the Owners could obtain individually, the Association shall provide such insurance coverage unless the then

Owners of a majority of the Units consent in writing to discontinue such coverage and assume responsibility for insuring their own Units in their entirety.

All costs which the Association incurs in providing insurance on Units shall be allocated equally among the Units as to which the Association's insurance obligations have commenced hereunder and levied as a Specific Assessment under Section 12.4; provided, if the insurance provider or agent provides a breakdown of the total premium showing the portion thereof attributable to each Unit, the Board shall assess each Unit for that portion of the premium attributed to such Unit as reflected in such breakdown, rather than allocating the premium equally among the Units.

If the Association ceases to provide master property insurance coverage hereunder, the Association shall refund or credit to account of each Owner that portion of any Specific Assessment paid hereunder attributable to insurance premiums for master property coverage for the period after termination of the Association's insurance responsibility.

Insurance responsibility and maintenance responsibility are separate and independent; this Section 6.4(a) shall not be construed to expand the Association's responsibility for maintenance of Units beyond that specified in Section 6.2.

Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Unit, their family, guests or invitees, nor shall the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of the Association, Declarant or their respective agents or employees.

(b) ***Liability Coverage.*** Every Owner shall obtain and maintain at all times a policy of liability insurance covering consequential damages to any other Unit or the Common Area due to occurrences originating within the Owner's Unit caused by the negligence of the Owner, the failure of the Owner to maintain the Unit, and any other casualty within the Unit which causes damage to the Units or the Common Area, to the extent such coverage is not provided by policies maintained by the Association or to the extent insurable losses may result in the Owner's liability for payment of deductibles under the Association's policies. Such insurance policy or policies shall name the Association as an additional insured. In addition, Owners are encouraged to obtain a "loss assessment" endorsement.

(c) ***Evidence of Coverage.*** Each Owner shall submit to the Association, at least annually and within 10 days of any written request from the Board of Directors, a certificate or certificates evidencing that all insurance coverage which the Owner is obligated to provide hereunder is in effect. In addition, if the Board so requests, each Owner shall file with the Association a copy of the individual policy or policies covering his or her Unit. Each Owner shall promptly notify the Board in writing in the event such policy on his or her Unit is canceled or not renewed. The Association shall have no liability arising out of failure to ensure an Owner's compliance with the insurance requirements under this Section 6.4.

(d) ***Failure to Maintain Insurance.*** In the event that an Owner fails to obtain or maintain any insurance that the Owner is required to obtain hereunder, the Association may, but shall not be obligated to, obtain such insurance on behalf of the Owner and assess the costs thereof to the Owner and the Owner's Unit as a Specific Assessment.

6.5. Casualty Losses; Responsibility for Repair and Replacement.

Regardless of whether the insurance on a Unit is obtained by the Association or the Owner, in the event of a casualty loss affecting any portion of the Unit which the Association is responsible for maintaining under Section 6.2(a), the Association shall be entitled to file a claim under such insurance for the cost of any repair or reconstruction to the Unit and improvements thereon which is the Association's responsibility.

If the Owner of the Unit suffering the loss is responsible for maintaining such insurance on the Unit, the Owner shall pay the amount of any deductible and shall be responsible for any deficiency in the insurance proceeds. If the Owner fails to fund such deficiency, the Association shall be relieved of any obligation to maintain, repair and replace damaged or destroyed portions of such Owner's Unit which are the Association's responsibility under Section 6.2 to the extent of such insufficiency, and the Owner shall be responsible for repair and replacement of the same within 90 days after the casualty loss resulting in damage to or destruction of a structure on a Unit. Alternatively, the Association may perform required repairs, whether the responsibility of the Association or the Owner, and assess all costs in excess of insurance proceeds to the Owner and the Owner's Unit as a Specific Assessment pursuant to Section 12.4 of this Declaration.

If the Association is responsible for maintaining insurance on the Unit suffering the loss, any deductible and any deficiency shall be Common Expenses to be assessed against all Units covered by the insurance policy, unless the Board determines, after notice and an opportunity for a hearing, that the casualty loss was the result of the negligence of the Owner or occupant of the damaged Unit, in which case the deductible may be assessed against the Unit and the Owner thereof as a Specific Assessment. The Association shall be entitled to adjust with the insurance provider the amount of any proceeds payable to the Association and the Owner thereunder, based upon the amount necessary to enable the Owner and the Association each to repair and replace those portions of the Unit and improvements thereon which are their respective responsibilities.

Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Unit, their family, guests or invitees, nor shall the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of the Association, Declarant or their respective agents or employees.

ARTICLE 7 USE AND CONDUCT

This Article sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the rules regulating use, conduct, and activities within the Community may be expanded and modified to address particular needs and desires of the Community over time.

7.1. Use, Occupancy, and Transfer of Interests in Units.

(a) ***Residential and Related Uses.*** Units may be used only for residential and related purposes, except as the Declarant may otherwise authorize with respect to construction, marketing, and sale activities of the Declarant and Builders it designates. A business activity shall be considered "related" to a residential use

and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable law and zoning requirements;

(iii) does not violate Section 7.1(e) or involve (A) the sale of controlled substances or firearms; (B) regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees; or (C) door-to-door solicitation within the Community; and

(iv) is consistent with the Community's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

Notwithstanding compliance with the above, the propagation, growing, sale, or distribution of marijuana for any purpose shall not be permitted on any Lot.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Provision of child care on a limited basis for a fee shall not be considered a "business" within the meaning of this subsection so long as the child care provider: (i) resides in the home where the child care is provided; (ii) does not employ other persons to assist in the provision of child care; and (iii) does not provide child care to more than two children at a time who do not reside in the home where the child care is provided, or more than four children total, including the children of the child care provider. The Board is specifically authorized to adopt rules regulating child care operations within the Community, including rules limiting parking of vehicles, traffic flow, and use of recreational facilities in connection with child care operations, in order to minimize the impact of such operations upon any portion of the Community.

(b) **Leasing.** For purposes of this Declaration, the terms "**Lease**" and "**Leasing**" shall refer to the granting of a right of exclusive occupancy of a Unit to any Person other than the Owner for which the Owner receives any consideration or benefit. Leasing of Units shall be subject to strict compliance with the following:

(i) Any Unit that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased;

(ii) The leasing of multiple Units by a single Owner, or the leasing of multiple Units by two or more Owners related by blood, adoption, or marriage, or by Owners with a common ownership interest, or by a group of Owners under the control or direction of a single Owner, shall be prohibited, except that this prohibition shall not apply to restrict the leasing of two or more Units by an institutional lender upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure;

(iii) No signs shall be posted in Heritage Trails or on the right-of-way adjacent to Heritage Trails advertising the availability of the Unit for rent, except that the Owner of a Unit being offered for lease may post one standard real estate sign on such Unit advertising the Unit for rent during any period that the Unit is vacant and authorized to be rented hereunder and within the 90 day period immediately prior to expiration of the term of any lease which is not being renewed, provided that such sign complies with the Architectural Guidelines adopted pursuant to Section 5.3 and any applicable sign ordinances;

(iv) Any lease shall be in writing and shall provide for a minimum initial term of at least 30 days. The Unit may not be subleased and the lease may not be assigned during the initial 30 days of the lease term. In the event of termination of the lease within the first 30 days after the tenant has taken occupancy, the Owner may not enter into a new lease with a term commencing within 30 days after the commencement of the previous lease without prior approval from the Board, which shall not be granted unless the Board determines, after consideration of the facts and circumstances, that the Owner acted in good faith, with no intent to circumvent the requirements of this subsection (b), and could not reasonably have anticipated the early termination of the previous lease at the time the lease was signed; and

(v) **All leases shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.**

Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide (i) an alternate mailing address for the Owner, (ii) the name of the Owner's local management agent managing the leasing of the Unit and such agent's contact information; (iii) a copy of the signed lease, and (iv) such additional information the Board may reasonably require. The Owner shall give the tenant copies of the Governing Documents prior to the tenant taking occupancy of the Unit.

In addition to, but consistent with this subsection, the Association or the Board may adopt Rules governing leasing and subleasing. Such Rules may require that Owners use Board-approved lease forms (or include specific lease terms) in any lease.

If and to the extent that any provision of this subsection (b) would disqualify a Unit for a federally-insured or federally-guaranteed Mortgage loan, any Unit that would otherwise be eligible for such a Mortgage loan shall be exempt from such provision during any period that: (i) any application for such a Mortgage loan is pending; (ii) such Mortgage is insured or guaranteed under any federal program providing insurance for repayment of or guaranteeing such Mortgage loan, or (iii) the Unit is owned by the Mortgage holder or by any federal agency pursuant to such federal program following the exercise of the Mortgage holder's remedies due to the borrower's default under the terms of the Mortgage.

(c) ***Transfer of Title; Resale Certificate.*** Any Owner other than the Declarant desiring to sell or otherwise transfer title to such Owner's Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title. The Person transferring title shall also be responsible for payment of the Enhancement Fee required under Section 12.11 of this Declaration, as applicable.

Within 10 business days after the Association's receipt of a written request from an Owner, an Owner's agent, a purchaser of a Unit, a purchaser's agent, or a title insurance company acting on behalf of the Owner or purchaser of a Unit, specifying the name and address of the person to whom it is to be delivered, the Association shall deliver to the person specified in such request a resale certificate containing all information required by Tex. Prop. Code Section 207.003(b) ("**Resale Certificate**"), along with a current copy of the Governing Documents. If the requestor is a purchaser or purchaser's agent, the Association may require reasonable evidence that the purchaser has a contractual or other right to acquire the Unit prior to preparing the Resale Certificate. The Resale Certificate shall be prepared as of a date which is not more than 60 days prior to the date of delivery and delivered by mail, hand delivery, or such alternative method of delivery as may be specified in the written request. At any time within 180 days after the date of the initial request, the requestor may request an update to such certificate, which update shall contain the information required by Tex. Prop. Code Section 207.003(f) and shall be delivered not later than the seventh business day after the date of such request. The Association may charge a reasonable fee to prepare, assemble, copy, and deliver a Resale Certificate and accompanying information and any update thereto, and may require such fee to be paid before preparing the Resale Certificate or update.

If the Resale Certificate indicates that there are known conditions on the Unit which violate the Governing Documents, or that there are amounts due and unpaid to the Association on account of the Unit, the Owner shall be responsible for curing such violations and paying any such amounts due prior to transfer of title and, upon doing so, may request an update to the Resale Certificate to reflect such action. If the transferring Owner fails to cure violations or pay amounts due prior to transfer of title, the new Owner shall be jointly and severally responsible with the prior Owner for curing such violations and paying any amounts due and unpaid.

Upon acceptance of title to a Unit, the new Owner of the Unit shall pay to the Association a reasonable administrative fee in such amount as the Board may determine necessary to cover the costs the Association incurs to update the Association's records.

(d) ***Subdivision and Combination of Units.*** No Person, other than the Declarant and Builders whom the Declarant may authorize in writing, shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling.

(e) ***Transient or Lodging Use; Timesharing.*** No Person shall advertise or operate any Unit, or any room, garage, or other portion of a Unit, as a hotel, inn, "bed and breakfast," vacation rental, or for other short-term lodging purposes, nor shall any Unit be used for lodging of persons other than the Owner or a tenant who resides in the Unit pursuant to a lease complying with Section 7.1(b), members of their respective households, and their occasional, non-paying guests. No Unit shall be used for overnight lodging of a business' employees, customers, or invitees when the Owner, tenant or another permanent resident of the Unit is not present in the Unit; however, if a Unit is owned by a legal entity, such entity may permit the Unit to be occupied on a long-term or short-term basis by any director, officer, partner, or employee of such entity which the Owner identifies in advance by written notice to the Association, provided that no more than one such person and the members of such person's household shall be permitted to occupy the Unit in any 30-day period. No Unit shall be used for operation of any type of timesharing, fraction-sharing, residence club, vacation club, destination club, or similar program whereby

the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule, on a reservation basis, or on such other basis as may be set forth in the terms of the program.

7.2. Rulemaking Authority and Procedures.

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Members are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

(a) ***Declarant Authority.*** So long as the Declarant has the right unilaterally to amend this Declaration pursuant to Section 21.2, the Declarant may unilaterally amend Exhibit "C" to add new Rules or to modify or rescind existing Rules.

(b) ***Board Authority.*** Subject to the notice requirements in subsection (d) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval.

(c) ***Membership Authority.*** Subject to the notice requirements in subsection (d), the Members entitled to cast a majority of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval.

(d) ***Notice.*** The Board shall send notice to all Owners or publish notice in a community newsletter or on a community intranet or website concerning any Rule change proposed under subsections (b) or (c) above at least five business days prior to the meeting of the Board or the Members at which such action is to be considered. At any such meeting, Members shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(d) ***Effective Date.*** A Rules change under this Section 7.2 shall be reflected in an amendment to Exhibit "C" executed by the Declarant or the Association, or both, as applicable, and recorded. Any such amendment shall take effect upon recording or 30 days after the date on which written notice of the Rules change is given to the Owners, whichever is later.

(e) ***Administrative and Operating Policies.*** The procedures set forth in this section do not apply to administrative and operating policies that the Board may adopt relating to the Areas of Common Responsibility, such as hours of operation of a Common Area recreational facility, speed limits on Private Streets, if any, safety regulations, or the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(f) ***Conflicts.*** No action taken under this section shall have the effect of modifying or repealing the Architectural Guidelines or any provision of this Declaration other than the Rules. In the event of a conflict between the Architectural Guidelines and the Rules, the Architectural Guidelines shall control. In

the event of a conflict between the Rules and any provision of this Declaration (exclusive of the Rules), the Declaration shall control.

7.3. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) *Similar Treatment.* Similarly situated Units shall be treated similarly; however, the Rules may vary by distinct characteristics that the Board deems to justify such variations.

(b) *Flags and Other Displays.* No Rule shall abridge the right of the Owner or occupant of a Unit to display the official flag of the United States of America in accordance with 4 U.S.C. Sections 5-10, the flag of the State of Texas in accordance with Chapter 3100 of the Texas Government Code, or an official or replica flag of any branch of the United States armed forces, on the Unit owned or occupied by such Owner, except that Rules may regulate the location, size, use and manner of display of such flags and flagpoles and associated lighting to the extent permitted by Tex. Prop. Code Chapter 202.

No Rule shall regulate the content of political signs, except that the Association may adopt time, place, and manner restrictions with respect to such signs, symbols, and displays as are visible from outside structures on the Unit, including reasonable limitations on size, number, and time period within which they may be displayed, consistent with Tex. Prop. Code Chapter 202 and any other applicable provisions of Texas law.

(c) *Household Composition.* No Rule shall interfere with an Owner's freedom to determine the composition of its household, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on the size and facilities comprising the dwelling on a Unit and its fair share use of the Common Area.

(d) *Activities Within Dwellings.* Except as otherwise specifically provided in this Declaration, no Rule shall interfere with lawful activities carried on within a dwelling, except that the Association may prohibit activities inconsistent with this Declaration or otherwise inconsistent with a residential use of the property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(e) *Allocation of Burdens and Benefits.* No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article 12.

(f) *Leasing and Transfer of Units.* No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit, except as provided in Section 7.1.

(g) *Abriding Existing Rights.* No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto

the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

(h) *Reasonable Rights to Develop.* No Rule may unreasonably interfere with the Declarant's ability to develop, market, and sell property in the Community.

(i) *Interference with Easements.* No Rule may unreasonably interfere with the exercise of any easement.

7.4. Owners' Acknowledgment and Notice to Purchasers.

By accepting title to a Unit, each Owner acknowledges and agrees that the use, enjoyment, and marketability of such Owner's Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

ARTICLE 8 COMPLIANCE AND ENFORCEMENT

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the Owners in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This Article sets forth the obligation to comply and the remedies available to the Association for noncompliance.

8.1. Compliance.

Every Owner and occupant, of a Unit, their tenants and guests, and any other visitor entering the Community must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Article. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants, tenants, guests, or invitees to their Units, and for any damage to the Area of Common Responsibility that such Persons may cause.

8.2. Remedies for Non-Compliance.

The Association, the Declarant, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents, subject to the terms of Article 19, as applicable; provided, prior to the Association filing suit against an Owner, other than a suit to collect assessments or foreclose the Association's lien under Article 12, the Association shall provide written notice to the alleged violator and an opportunity for a hearing in accordance with the By-Laws. In addition, the Board may impose sanctions for violation of the Governing Documents, including those listed below and any others described elsewhere in the Governing Documents.

(a) *Sanctions Requiring Prior Notice and Hearing.* After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, tenant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit. This subsection (a)(ii) shall not preclude Association personnel or pool staff from immediately ejecting from a Common Area facility any person who violates safety rules or threatens the safety of other users;

(iii) suspend services the Association provides to the Unit (except that no opportunity for a hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(iv) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(v) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article 5, including the Architectural Guidelines, from continuing or performing any further activities in Heritage Trails;

(vi) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents or to reimburse the Association for property loss or damage arising from the conduct of the Owner or occupants of the Owner's Unit; and

(viii) record a notice of violation with respect to any Unit on which a violation exists.

If, after notice and an opportunity for a hearing, the violation continues or recurs within 12 months after the date of such notice, the Board may impose any of the above sanctions without further notice or opportunity for another hearing.

(b) ***Other Sanctions.*** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Unit in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit that is in violation of the Community-Wide Standard or other requirements under the Governing Documents, to correct deficiencies or deviations from the plans approved pursuant to Article 5, and in an appropriate case, to restore the property to its previous condition; or

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass.

8.3. Board Decision to Pursue Enforcement Action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

8.4. Attorneys' Fees and Costs.

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

8.5. Enforcement of Ordinances.

The Association, by contract or agreement, may enforce applicable ordinances. In addition, the City of Lewisville may enforce its ordinances within Heritage Trails.

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

(vii) to the Association upon foreclosure of its lien for assessments under Section 12.7, or to another purchaser at such foreclosure sale;

(viii) under circumstances which the Board, in its discretion, deems to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes may be, but is not required to be, deemed exempt from payment of the Enhancement Fee).

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

ARTICLE 13 EASEMENTS

The easements created in this Article establish the rights of Owners to use the Common Area and create various rights for the benefit of Owners, the Declarant, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the Association's rights to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.

13.1 Easements in Common Area.



AN EASEMENT IS ONE PERSON'S RIGHT TO GO UPON OR USE THE PROPERTY OF ANOTHER.

The Declarant grants to each Owner a nonexclusive right and easement appurtenant to such Owner's Unit for use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) Certain Owners' rights to the exclusive use of those portions of the Common Area designated as Limited Common Area; and
- (d) The Board's right to:
 - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
 - (ii) suspend an Owner's right to use Common Area facilities pursuant to Article 8;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area, except as otherwise specifically provided in this Declaration or any deed conveying the Common Area to the Association;

(v) rent or grant a license to use any portion of any clubhouse or other Common Area facility on an exclusive or non-exclusive short-term basis to any Person on such terms as the Board may determine;

(vi) permit use of any recreational facilities situated on the Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and

(vii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(e) the rights of the Declarant and its designees under Section 18.2.

Any Owner may extend the Owner's right of use and enjoyment to the members of such Owner's family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases such Owner's Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

13.2. Easements of Encroachment.

 ***AN ENCROACHMENT OCCURS WHEN A PERSON'S HOME, FENCE, OR OTHER STRUCTURE EXTENDS ONTO HIS OR HER NEIGHBOR'S PROPERTY. THIS SECTION PERMITS MINOR, INADVERTENT ENCROACHMENTS TO REMAIN.***

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than two feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3. Easements for Utilities, Etc.

(a) ***Installation and Maintenance.*** During the Development and Sale Period, the Declarant reserves for itself and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure to serve the Community, other Technology Systems, security and similar systems, and drainage systems;

(ii) install walkways, pathways and trails, street lights, and signage on property the Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, the Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) ***Specific Easements.*** The Declarant also reserves the nonexclusive right and power to grant and record such specific easements consistent with Section 13.3(a) as it deems necessary to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) ***Minimal Interference.*** All work associated with the exercise of the easements described in subsections (a) and (b) of this section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

13.4. Easements to Serve Additional Property.

The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property. This easement shall also include, without limitation, the right to make any or all of the Common Area facilities available on a temporary or permanent basis to owners of any portion of the property described on Exhibit "B."

If the above easement grants permanent access to and from any property which is not submitted to this Declaration, or permanent use privileges to the owners of any property which is not submitted to this Declaration, the Declarant, or its successors or assigns, shall establish, by agreement with the Association or covenant on the benefited property, a reasonable arrangement by which the owners of the benefited property or any mandatory membership owners Association having jurisdiction over such property shall (a) share on a reasonable basis the costs which the Association incurs in connection with the ownership, maintenance, repair, replacement, operation, and insurance, of the Common Area facilities of which use is shared pursuant to this easement, including any management fees; or (b) provide reciprocal rights to the Association's Members to use comparable facilities within such portion of the Additional Property, or (c) a combination of (a) and (b). The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property. Notwithstanding the foregoing, the Declarant and the Association may grant easements to the general public for use of property or facilities owned or maintained by the Association without seeking compensation or reimbursement for use by the general public.

13.5. Easements for Maintenance, Emergency, and Enforcement.

By this Declaration, the Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Sections 6.2 and 9.2 and its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

13.6. Easement for Fence and Landscape Maintenance.

The Declarant reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement for the purpose of constructing, installing, maintaining, repairing, and replacing perimeter fencing or walls and landscaping:

- (a) within 20 feet of the perimeter boundary of the Community;
- (b) within 20 feet of the back-of-curb of public or private streets and alleys within the Community; and
- (a) between any fence or wall easement shown on a recorded plat of any portion of the Community and the back-of-curb of the nearest street running generally parallel to such fence or wall easement.

Nothing in this section shall obligate the Declarant, the Association, or any Builder to install fencing, walls, or landscaping, the installation of such items being in the sole discretion of the Declarant, the Association, and the Builders, as applicable, subject to such approvals as may be required under Article 5 of this Declaration.

13.7. Easements Over Streets and Alleys.

(a) *Rights of Association and Owners.* From the date of completion of construction and final inspection of any street or alley within the Community which has not been dedicated or conveyed to and accepted by the City or another local governmental authority ("**Private Street**") until the Declarant conveys such street to the Association or dedicates it to the City or another local governmental authority for public use, the Private Street shall be subject to a temporary, nonexclusive easement for access, ingress, and egress for the benefit of the Association, each Unit and the Owner thereof, and each other portion of the Community.

Use of any Private Street shall be subject to and in accordance with this Declaration, the recorded plat, any law, ordinance, or regulation governing the use of such street, and the Association Rules.

(b) *Service Easements.* The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over any Private Street for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; and for vehicles, equipment, and personnel providing garbage and/or recycling collection service to the Community, provided that such easement shall not authorize any such Persons to enter the Private Streets except while acting in their official capacities.

The existence of these easements shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access over any Private Street to portions of the Community, provided that the Association at all times maintains systems and/or procedures to permit the uncontested entry of Persons authorized to exercise the easements granted in this subsection (b) without unreasonable interference or delay.

ARTICLE 15 DISCLOSURES AND WAIVERS

This Article discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each home buyer or new Owner, by accepting title to property in the Community, and each occupant or guest of a Unit, by occupying the Unit or entering the Community, also accepts and agrees to the matters set forth in this Article.

15.1. Public Access.

The general public may have access to the Community and Common Areas via public streets and sidewalks, parks, trails and paths. The Association may, but shall have no obligation to, control public access to or monitor Common Areas or other portions of the Community to identify and eject unauthorized persons. Neither the Declarant nor the Association shall have any obligation to construct or install walls or fences or to implement any other measures to secure the perimeter boundaries of the Community or any part of the Community in order to prevent or restrict entry by the general public.

15.2. Neighboring Uses.

Every community is impacted by conditions which different people may find objectionable. Each Owner and occupant of a Unit, by taking title to or occupying a Unit, acknowledges and agrees that there may be conditions within and outside of the Community which he or she may find objectionable and that it shall be the Owner's or occupant's sole responsibility to become acquainted with conditions within and surrounding Heritage Trails which could affect the use and enjoyment of the Unit. No representations are made regarding the use or zoning of adjacent property or that the category to which adjacent property is zoned may not change in the future.

Each Owner agrees that the Declarant, the Association, and any Declarant Affiliate or agents shall not be liable to any Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, death, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of the Owner's Unit to objectionable uses or conditions on property in the vicinity of Heritage Trails, including without limitation, any claim arising in whole or in part from the negligence of the Declarant, any Declarant Affiliates, or their agents, or the Association. The Owner agrees to indemnify and hold harmless the Declarant, Declarant Affiliates and agents, and the Association against any and all such claims by their tenants and any other person residing in such Owner's Unit.

15.3. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but

shall not be obligated to, maintain or support certain activities within the Community 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, neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, 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 Community cannot be compromised or circumvented, nor that any such systems 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 tenants and other occupants of such Owner's Unit, that the Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

15.4. View Impairment.

Neither the Declarant nor the Association guarantee or represent that any view over and across the Units or any open space or parks within or adjacent to Heritage Trails, will be preserved without impairment. Neither the Declarant nor the Association shall have any obligation to relocate, prune, or thin trees or other landscaping to provide or maintain views. The Association shall have the right to add trees and other landscaping to Common Areas from time to time. There shall be no express or implied easements for view purposes or for the passage of light and air.

15.5 Construction and Development Activity.

Each Owner acknowledges that construction and development activities will be taking place in Heritage Trails until Heritage Trails is completely built out and thereafter as properties are improved, repaired, and modified from time to time. There may be some inconvenience and disturbance during the course of such activities, including such things as construction noise, traffic diversions, and dust and noise emanating from the property upon which such activities are occurring. Neither the Declarant nor the Association shall have any duty to take action to abate such inconveniences or disturbances, nor shall either have any liability for personal injury or property damage resulting from such activities or entry into such areas.

15.6. Protected Buffers.

Each Owner acknowledges that wetlands, open space, flood plains, ponds, streams, and drainage and detention facilities within or adjacent to the Community are part of the stormwater drainage system for the Community and not designed as aesthetic features. Water levels may fluctuate dramatically and at times may flood or be muddy or dry. Neither the Declarant nor the Association has any control over such water levels. Each Owner agrees to release and discharge the Declarant, Declarant Affiliates, and the Association from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water levels. No person shall alter, modify, expand, or fill any wetlands, ponds, streams, drainage or detention facilities, swales, or culverts located within or in the vicinity of the Community without the prior written approval of the Declarant and any local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

Owners and occupants of Units have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear, or otherwise disturb natural vegetation within any portion of a Unit designated as a stream buffer or nondisturbance buffer on a recorded plat, nor within any property situated between the Unit boundary and the bank or water's edge of any body of water, except as may specifically be authorized in writing by the Association, the City, or any governmental or quasi-governmental agency having jurisdiction over such area.

15.7. High Voltage Power Lines; Radio and Telecommunication Towers.

Every Owner and occupant of a Unit is hereby advised that high voltage power transmission lines and radio and telecommunication towers and related equipment may be located within or in the vicinity of Heritage Trails. While various studies have failed to establish any causal relationship between living in proximity to high voltage power transmission lines or radio towers and cancer or other diseases, there remains some speculation that such a relationship may exist. Every Owner and occupant of a Unit must evaluate such risk for themselves prior to making a decision to purchase and occupy a Unit. The Declarant, any Declarant Affiliate, Builders, the Association, and their respective members, partners, affiliates, officers, directors, agents, and employees, shall not be liable for any damage or injury to any person or property arising out of or related to the construction, installation, maintenance, or operation of, or proximity to, high voltage power transmission lines and/or radio or telecommunication towers, or any such towers that may now or hereafter be located in or in the vicinity of Heritage Trails.

15.8. Natural Conditions.

Open space within or adjacent to the Community may serve as habitats for a variety of native plants and wildlife, including insects, venomous and non-venomous snakes and other reptiles, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and occupant of a Unit, and every person entering the Community: (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or throughout the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife in the Community. Neither the Association, the Declarant, any Builder, nor the members, partners, affiliates, officers, directors, agents, or employees of any of them, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement, or propagation of any plant or wildlife within or through the Community.

The natural areas described in this section may also contain creeks, ponds, streams, and other bodies of water or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Unit shall enter upon or disturb, or permit their guests or any other person acting in their behalf to enter upon or disturb, such areas in any way without the Association's or the Declarant's prior written approval.

15.9. Utility Easements.

Portions of the Community may be subject to easements for power transmission lines, natural gas pipelines, and other utility transmission devices. The Association shall have no responsibility for providing maintenance to such areas or improving them to the Community-Wide Standard.

15.10. Schools.

No representations are made regarding the future or continued operation of public or private schools, daycare centers, or early childhood programs that currently or may in the future serve the Community, and the Declarant makes no commitment to construct or organize any such school or program.

15.11. Animal Control.

The Association shall have no responsibility for animal control within the Community. The City provides animal control services within the City limits.

15.12. Proximity to Railroad.

As of the date of recording of this Charter, there is a railroad right-of-way adjacent or in close proximity to the Community with tracks in active use and trains running regularly along such tracks, which trains may be visible from and generate noise audible to persons in the Community, impact air quality within the Community, and pose a hazard to persons entering upon or in the vicinity of the railroad right-of-way. The Declarant, the Association, and Builders have no ability to control access to, use of, facilities within, or sound levels or odors and emissions from, such railroad right-of-way and have no duty to install barriers, screens, landscaping or other devices to minimize such impacts or limit access to or from the Community.

There are a variety of risks associated with proximity to railroad lines, including hazards to persons walking within or crossing the railroad right-of-way, the possibility of train derailment, motor vehicle accidents, and chemical spills, among other things. Each Owner and occupant, by accepting a deed or lease of any Unit, assumes all risk of personal injury resulting from entry upon such railroad right-of-way by themselves, their children and pets, and other members of their household and agrees that neither the Founder, the Association, nor any Builder, shall have any liability whatsoever for any property damage, personal injury, or death arising out of or related to such entry or proximity of any Unit to such railroad right-of-way.

ARTICLE 16 RIGHTS OF LENDERS

This Article sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

16.1. Provision of Mortgage Information.

Upon the Association's request, each Owner shall provide the Association with the name and street address of the holder or guarantor of any Mortgage encumbering such Owner's Unit. If the Association has not been notified of the name and street address of the holder or guarantor of a Mortgage on a Unit, the Association may send any notice to Mortgagees to the Owner at the Unit address with a request that the Owner provide such notice to its Mortgagee, and such act shall be deemed sufficient notice to the Mortgagee of such Unit for all purposes under this Declaration and the By-Laws.

16.2. FHA Provisions.

Notwithstanding anything to the contrary herein, any Unit which is subject to a Mortgage insured by the Federal Housing Administration (FHA) shall be exempt from any provision of this Declaration or the By-Laws to the extent that such provision would cause a lease or conveyance of such Unit to:

- (a) be void or voidable by a third party;
- (b) Be the basis of contractual liability of the Owner for breach of any right of first refusal, pre-emptive right or option, or other agreement not to convey;
- (c) terminate or make subject to termination all or a part of the Owner's interest in the Unit if a conveyance is attempted;
- (d) be subject to the consent of a third party;
- (e) be subject to limits on the amount of sales proceeds retainable by the Owner upon resale.

16.3. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards.

16.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Association to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 60 days after the Mortgagee actually receives proper notice of the proposal by certified or registered mail, return receipt requested.

16.5. Amendment by Board.

The purpose of this Article 16 is to facilitate financing of Unit purchases by compliance with secondary mortgage market requirements or standards. Should any institutional or governmental lender, purchaser, insurer, or guarantor of residential mortgage loans, including, for example, Fannie Mae, Freddie Mac, the Department of Housing and Urban Development, or the Department of Veterans Affairs, hereafter eliminate, create, or otherwise revise any of their respective requirements to make, purchase, insure, or guarantee mortgage loans on Units, the Board, without approval of the Owners or Mortgagees, may cause an amendment to this Article to be recorded to comply with such revised requirements. Each Owner, by accepting title to a Unit, and each Mortgagee, by accepting a Mortgage on a Unit, acknowledges and agrees to such amendments and grants to the Board the authority to make changes to this Article 16 as contemplated by this Section.

PART FIVE: COMMUNITY DEVELOPMENT

ARTICLE 17

EXPANSION OF THE COMMUNITY

The Community may be developed in phases. The Declarant or the Association may expand the initial property submitted to the Declaration as set forth in this Article.

17.1. Expansion by Declarant.

From time to time, the Declarant may submit to the terms of this Declaration all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not the Declarant.

The Declarant's right to expand the Community under this section expires when all property described in Exhibit "B" has been submitted to this Declaration or 10 years after this Declaration is recorded, whichever is earlier. Until then, the Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Declarant.

Nothing in this Declaration shall require the Declarant or any successor to submit additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever. The Declarant may submit different parcels of property to this Declaration at different times. The Declarant gives no assurances as to the boundaries of the parcels that may be submitted to this Declaration, to the order in which the Declarant may submit parcels of property to this Declaration, or to whether buildings erected on any additional property submitted to this Declaration will be compatible with other buildings in the Community in terms of architectural style, quality of construction, principal materials employed in construction, size, or price.

17.2. Expansion by the Association.

The Association also may submit additional property to this Declaration by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Members entitled to cast more than 50% of the total votes in the Association and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Declarant's consent is required. The Association's President and Secretary, the owner of the property, and the Declarant, if the Declarant's consent is required, shall sign the Supplement.

17.3. Additional Covenants and Easements.

Any Supplement that the Declarant records may impose additional covenants, restrictions and easements on the property described in such Supplement. Such provisions may be included in a Supplement submitting new property to this Declaration or may be set forth in a separate Supplement applicable to property previously submitted to this Declaration. If someone other than the Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies

to the property described in the Supplement, in order to reflect the different character and intended use of such property.

17.4. Effect of Filing a Supplement.

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

ARTICLE 18 ADDITIONAL RIGHTS RESERVED TO THE DECLARANT

This Article reserves various rights to the Declarant, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Declarant's development and sale of property in the Community, to enable the Declarant to respond to Owners' concerns, and to protect various property rights and other interests of the Declarant.

18.1. Special Development Rights.

In addition to the rights specifically reserved to the Declarant under Article 17 with respect to expanding the Community, the Declarant reserves the right, during the Development and Sale Period to:

- (a) subdivide and replat any property that it owns, and create Units, Common Areas, Limited Common Areas, and roadways, within any portion of Heritage Trails that it owns;
- (b) grant or reserve easements over any portion of Heritage Trails that it owns;
- (c) combine any Unit or Units which it owns in order to create larger or additional Units, Common Areas, and/or Limited Common Areas;
- (d) adjust the boundaries of any portion of the Community that it owns;
- (e) cause the Association to convey or reconvey portions of any Common Area or Limited Common Area which is not improved with structures as necessary to make minor adjustments in boundary lines between such Common Area or Limited Common Area and adjacent properties;
- (f) amend this Declaration or any Supplement to withdraw property from the Community and the coverage of this Declaration, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal; and
- (g) authorize any Builder to exercise any of the above rights with respect to property owned by such Builder.

18.2. Marketing and Sales Activities; Capture and Use of Images.

(a) Notwithstanding anything in the Governance Documents to the contrary, during the Development and Sale Period the Declarant and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, information centers, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant and its employees, agents, and designees may park vehicles in designated parking areas. The rights described in this Section 18.2 shall specifically include the right of the Declarant and its designees to use Common Area facilities at no charge and to restrict use or access to such facilities by the Association, its Members and others so long as they are being used for the purposes described in this Section 18.2. The Declarant may authorize Builders to use similar privileges. There shall be no limit on the number or location of such facilities, except as otherwise restricted by applicable zoning or other applicable law.

(b) The Declarant reserves for itself and its designees the right, without the consent of or payment of compensation to any Person, to take photographs and to capture, produce, and reproduce, by any method and in any format or media, images of any structures, streetscapes, landscapes, signage, public spaces, or other elements located on Units, Common Area, or public property within the Community which are visible from public streets or Common Area, and to use such images in advertising, marketing materials, displays, presentations, and publications of any kind relating to the Community, including, without limitation, newspaper, internet, television, and other media. Each Owner, by accepting a deed to any Unit, shall be deemed to have consented to the exercise by Declarant and its designees of the rights described in this subsection (b) and to have waived any personal or proprietary right such Owner may have in connection with such images.

18.3. Right to Make Improvements, Replat.

During the Development and Sale Period, the Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area and streets and alleys within the Community for the purpose of:

(a) making, constructing, and installing any improvements indicated on recorded subdivision maps or plats of the Community and such improvements to the Common Area and to the Exhibit "B" property as it deems appropriate;

(b) exercising any rights reserved to the Declarant under this Declaration; and

(c) making repairs or correcting any condition on the Common Area or any Unit.

In addition, during the Development and Sale Period, the Declarant may replat property that it owns and convert Units it owns into Common Area.

18.4. Right to Approve Changes in Community Standards.

During the Development and Sale Period, no amendment to or modification of any Rules or Architectural Guidelines shall be effective without prior notice to and the written approval of the Declarant.

18.5. Additional Covenants and Restrictions.

During the Development and Sale Period, no one other than the Declarant may record any additional covenants or restrictions affecting any portion of the Community without the Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

18.6. Exclusive Rights to Use Name of Development.

No Person other than the Declarant or a Declarant Affiliate shall use the name "Heritage Trails" or any derivative of such name, or any logo or depiction associated with Heritage Trails, in any printed or promotional material or any Internet website without the Declarant's prior written consent. However, Owners may use the name "Heritage Trails" in printed or promotional matter where such term is used solely to specify that particular property is located within the Community, and the Association shall be entitled to use the word "Heritage Trails" in its name.

18.7. Technology Systems.

The Declarant reserves for itself and its respective successors and assigns, a perpetual right and easement over those portions of Units lying within 10 feet of the boundaries on any Unit to install and operate such Technology Systems as the Declarant, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other Technology Systems services in the region. The Declarant also has the right to charge or authorize any provider to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable. Notwithstanding the above, there is no guarantee or representation that any particular Technology System will be made available.

18.8. Easement to Inspect and Right to Correct.

The Declarant reserves for itself, the Builders, and others it may designate, the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of such Owner's Unit.

18.9. Right to Notice of Design or Construction Claims.

Neither the Association, any Owner, or any other Person shall initiate the dispute resolution procedures under Article 19, nor retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Declarant and any Builder involved in the design or construction have been first notified in writing, by certified mail, and given an opportunity to meet with the Association and/or the Owner of any affected Unit to discuss the concerns, conduct their own inspection, and take action to remedy any problem in accordance with this section. Any notice to the Declarant under this section shall include a description of

the alleged defect in design or construction ("**Defect**"), a description of any damage suffered as a result of the Defect, the date on which the Defect was discovered, and dates and times during ordinary business hours that the Declarant and any Builder may meet with the Owner or the affected Unit or representative of the Association to conduct an inspection.

Nothing in this section shall obligate the Declarant or any Builder to inspect, repair, replace, or cure any alleged Defect. However, if the Declarant or Builder elects to repair any alleged Defect, it will so notify the Association (if the alleged Defect involves Common Area) or the Owner of the affected Unit (if the alleged Defect is in a Unit) within 30 days after conducting such inspection and the Association or Owner shall permit the Declarant and Builder, and their respective contractors, subcontractors, and agents, access as needed during ordinary business hours to make such repairs as they deem appropriate which, once begun, shall be completed within a reasonable time, subject to the nature of the repair and unforeseen circumstances. All applicable statutes of limitations shall be tolled during the period of inspection and cure under this Section 18.9, not to exceed the earlier of: (i) 120 days after the date the Declarant receives written notice of the alleged Defect in accordance with this section; or (ii) the Declarant's delivery to the claimant of written notice that the Declarant does not intend to take any action or further action to remedy the alleged Defect.

In the event there is any dispute as to the adequacy of the proposed repairs to resolve the alleged Defect or as to whether repairs that the Declarant, any Builder, or their respective contractors or subcontractors have performed have remedied the Defect, the Declarant may appoint a third-party inspector who is knowledgeable and experienced in construction of the type at issue to inspect the alleged Defect and make a determination as to whether any proposed solution is adequate or as to whether the Defect has been remedied.

If the Association or any Owner fails to comply with this Section 18.9, neither the Declarant nor any Declarant Affiliate or Builder shall be liable for any general, special, or consequential damages, costs, or diminution in value that might have been avoided had the Declarant been given the notice and opportunity to repair described in this section. Nothing herein and no action taken by the Declarant or any Builder pursuant to this Section shall be construed as an admission that an alleged Defect actually exists or as an admission of liability for any alleged Defect or otherwise create liability for the Declarant or Builder.

18.10. Right to Transfer or Assign the Declarant's Rights.

Any or all of the Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part, temporarily or permanently, to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Declarant signs. The foregoing sentence shall not preclude the Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Declarant's consent to such exercise.

18.11. Termination of Rights.

Except as otherwise specified above, the rights contained in this Article shall not terminate until the earlier of: (a) termination of the Development and Sale Period; or (b) the Declarant's recording of a written statement that all sales activity has ceased.

ARTICLE 19

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

From time to time, disputes may arise between Owners or between an Owner and the Association, the Declarant, or others involved in the Community. This Article commits the parties to any such dispute to work together in an attempt to resolve the dispute without litigation, in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

19.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) ***Bound Parties.*** The Declarant, the Association, and their respective officers, directors, trustees and committee members, Owners, other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each a "**Bound Party**" and collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b) (as modified by subsection (c)), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 19.2 in a good faith effort to resolve such Claim, and then subject to the provisions of Section 19.3 and 19.4, if applicable.

(b) ***Claims.*** As used in this Article, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of Improvements within the Community, other than matters of aesthetic judgment under Article 5, which shall not be subject to review and shall not be subject to this Article;

except as otherwise provided in subsection (c).

(c) ***Exceptions.*** The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of Community standards);
- (iii) any suit that does not include the Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any suit which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 19.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article; and

(vi) any suit by the Association to enforce the Governing Documents where the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Association filing suit; and

(vii) any suit by the holder of a deed of trust recorded prior to this Declaration and encumbering any portion of the Community to enforce the terms of such deed of trust or such holder's rights under this Declaration.

19.2. Dispute Resolution Procedures.

(a) **Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Denton County or the Dallas-Fort Worth metropolitan area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, subject to the approval requirements set forth in Section 19.3, if applicable, and the mandatory arbitration provisions in Section 19.4, if applicable, and subject to the terms of any written agreement entered into between the Owner and a Builder or other Bound Party requiring the Claim to be submitted to binding arbitration.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Bound Party shall pay an equal share of the mediator's fees.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section 19.2, but subject to the provisions of Section 19.3 and 19.4, if applicable.

19.3. Initiation of Litigation or Arbitration by Association.

Litigation involving the Association can create a significant financial burden and exposure for the Association and its Members in terms of legal fees and costs as well as potential liability to third parties, interfere with the resale and refinancing of Units, and create uncertainty and tension within the Community, all of which can negatively impact property values and marketability of Units and impose financial burdens on Owners for their share of the costs. Litigation of certain types of disputes may be quite protracted, causing such impacts to continue for an extended period of time. Therefore, this Section imposes the following requirements that must be met prior to the Association initiating litigation (with certain exceptions as specified in subsection (a) below), in order to ensure that the membership is fully informed and supports the initiation of proceedings and requires binding arbitration of certain types of disputes in an effort to minimize the costs and time involved in resolving such disputes:

(a) **Membership Approval.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative or arbitration proceeding unless first approved by a vote of Members entitled to cast at least 67% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

(i) initiated during the Declarant Control Period unless the Declarant, by written notice to the Association, elects to have the proposal to initiate judicial or administrative proceedings be approved by the Members hereunder, in which case such approval shall be required;

(ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

(iii) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies entered into by the Association; or

(v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

(b) ***Information to be Provided to Members.*** Prior to any vote required under subsection (a):

(i) the Board shall comply with Section 18.9, if applicable; and

(ii) if the Association's claim involves alleged defects in the design or construction of improvements in the Community, the Board shall engage an independent professional engineer licensed by the Texas Board of Professional Engineers to conduct an inspection and provide a report detailing the condition of such improvements, describing and providing photographs of the alleged defects in design or construction, providing the engineer's recommendations for remediation and/or repair, and providing estimated costs of such remediation and repairs, which estimates shall be obtained from qualified, independent third-party contractors holding all necessary licenses to perform the recommended work; and

(iii) the Board shall provide written notice to each Member of the meeting at which the vote is to be conducted, which notice shall be accompanied by: (A) a copy of any report required under clause (i); (B) a description of the claim, the relief sought, the anticipated duration of the proceedings, and the estimated likelihood of success; (C) a copy of a proposed engagement letter between the Association and the law firm and/or attorney selected by the Association to assert or provide assistance with the claim setting forth the proposed financial arrangements between the Association and such lawyer or law firm; (D) a description and estimate of the legal fees, consultant fees, expert witness fees, and court costs, which the Association may incur directly or indirectly, or for which it may be liable, as a result of pursuing the claim; (E) a description of the manner in which the Association proposes to fund such costs; (F) a summary of the steps previously taken by the Association to resolve the claim; and (G) a statement that initiating the lawsuit or arbitration proceeding to resolve the claim may affect the market value, marketability, or refinancing of a Unit while the claim is being pursued.

(c) ***Binding Arbitration.*** Notwithstanding anything to the contrary herein, any suit initiated by the Association alleging defects in construction of any improvements to the Common Areas or other structures in the Community shall be subject to binding arbitration in accordance with Section 19.4.

19.4. Mandatory and Binding Arbitration of Certain Claims.

(a) ***Agreement to Resolve Certain Claims Through Binding Arbitration.*** Notwithstanding any other provision of this Declaration, if any Claim by the Association or any Owner or group of Owners arising out of alleged defects in the Units, Common Areas or any property subject to easements in favor of the Owners, is not resolved through negotiation or mediation in accordance with Section 19.2(b) or (c), each Claimant and Respondent is deemed to agree that it shall not file suit in court but in lieu thereof shall resolve such Claim through final and binding arbitration in accordance with this Section 19.4; however, this Section 19.4 shall not limit the right of any Claimant or Respondent to exercise any self-help remedy that may be available to it or to seek ancillary or provisional remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction, before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or

exercise of any self help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

Each Owner and Builder, by accepting a deed to a Unit, waives any right to have a Claim within the scope of this Section 19.4 resolved by judicial proceedings, including any right to a trial by jury. This Section 19.4 is an agreement of the Bound Parties to arbitrate the Claims described in this subsection and may be specifically enforced by any Bound Party. The Bound Parties acknowledge that any Claim subject to this Section 19.4 involves a transaction in interstate commerce and shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §1, et seq., to the exclusion of any inconsistent state law, regulation or judicial decision.

If any Bound Party commences litigation in violation of this Section 19.4, then upon any other party's written objection, the Bound Party commencing litigation shall immediately stipulate to the dismissal of that litigation without prejudice. If the Bound Party commencing the litigation fails to make that stipulation within five days after the filing of such written objection, that Bound Party shall reimburse the other parties for their costs and expenses, including reasonable attorneys' fees, incurred in seeking a dismissal or stay of that litigation if such dismissal or stay is obtained.

(b) *Statute of Limitations.* All statutes of limitations that otherwise would apply to any Claim subject to this Section 19.4 shall apply to the commencement of any arbitration proceeding under this Section 19.4.

(c) *Procedures.* Arbitration under this Section 19.4 shall be conducted in accordance with the American Arbitration Association (the "AAA") Construction Industry Arbitration Rules and Mediation Procedures and, if applicable, the rules contained in the AAA Supplementary Procedures for Consumer Related Disputes, as each are supplemented or modified by the AAA (collectively, the Construction Industry Arbitration Rules and Mediation Procedures and AAA Supplementary Procedures for Consumer Related Disputes are referred to herein as the "AAA Rules"). In the event of any inconsistency between the AAA Rules and this Section 19.4, this Section 19.4 will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

- (i) One arbitrator shall be selected by Respondent, in its sole and absolute discretion;
- (ii) One arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) One arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

(d) *Scope of Award; Modification or Vacation of Award.* The arbitrator shall resolve all Claims in accordance with applicable law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and not inconsistent with this Section 19.4, including, without limitation, subsection (f) hereof. Further, for a Claim or any portion of a Claim governed by Chapter 27 of the Texas Property Code or any successor statute, the arbitrator shall not award damages which exceed the damages a Claimant would be entitled to under Chapter 27 of the Texas Property Code. In all arbitration proceedings the

arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Texas law; (ii) conclusions of law that are erroneous; (iii) an error of applicable law; or (iv) a cause of action or remedy not expressly provided under applicable law. In no event may an arbitrator award speculative, special, exemplary, treble, or punitive damages for any Claim.

(e) *Other Matters.* To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Denton County, Texas. Unless otherwise provided by this Section, the arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure and applicable law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

(f) *Allocation Of Costs.* Notwithstanding any provision in this Declaration to the contrary, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

(g) *Liability to Third Parties.* A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

ARTICLE 20 CHANGES IN THE COMMON AREA

Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Common Area. This Article explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.

20.1. Assignment and Reassignment of Limited Common Area.

The Board may designate a portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and the vote of Members entitled to cast a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Declarant's written consent.

Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Limited Common Expenses attributable to such Limited Common Area.

20.2. Condemnation.

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 20.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area, to the extent sufficient land is available, unless within 60 days after such taking the Declarant, during the Development and Sale Period, and Members representing at least 67% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring improvements shall apply; or

(b) If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 20.4.

20.3. Partition.

No Person shall bring any action for judicial partition of the fee title to any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Section 20.4.

20.4. Transfer, Mortgaging, or Dedication of Common Area.

The Association may transfer or dedicate portions of the Common Area or subject Common Area to a security interest:

(a) upon request of the Declarant pursuant to Section 9.1 or Article 18;

(b) if Common Area other than Limited Common Area, upon the written direction of Members entitled to cast at least 67% of the total votes in the Association, and the Declarant during the Development and Sale Period; or

(c) if Limited Common Area, upon written approval of Owners of at least 67% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines, unless otherwise directed by the Members

approving such sale or mortgage at the time of such approval. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

ARTICLE 21 TERMINATION AND AMENDMENT OF DECLARATION

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This Article sets out procedures by which either the Declarant or the Owners as a group may amend this Declaration to address such changes.

21.1. Term and Termination.

This Declaration shall be effective and remain in effect for 50 years from the date of recording. Thereafter, this Declaration shall be extended automatically for successive 10-year periods unless at least 50% of the then Owners sign a document stating that the Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration shall terminate on the date specified in the termination document.

If any provision of this Declaration would be unenforceable, void, or voidable by reason of any rule restricting the period of time that provisions of that type can affect title to property to a period tied to the life of a now living person, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This section shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

21.2. Amendment.

(a) *By the Declarant.* In addition to the specific amendment rights granted elsewhere in this Declaration, during the Declarant Control Period, the Declarant may unilaterally amend this Declaration for any purpose.

(b) *By Owners.* Except as otherwise specifically authorized above or elsewhere in this Declaration, this Declaration may be amended only by affirmative vote or written consent, or any combination thereof, of Members entitled to cast at least 67% of the total votes in the Association or such greater percentage as required by other provisions of this Declaration. In addition, during the Development and Sale Period, any amendment pursuant to this subsection (b) shall also require the Declarant's written consent.

Any amendment pursuant to this subsection (b) shall be prepared, executed, certified, and recorded on behalf of the Association by any officer designated for such purpose or, in the absence of such designation, by the Association's President.

(c) *Validity and Effective Date.* Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for

action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Declarant Member without the written consent of the Declarant or the Declarant Member (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(d) *Exhibits.* Exhibits "A" and "B" are incorporated by this reference, and this Article shall govern amendment of those exhibits, except as otherwise specifically provided in this Declaration. Exhibit "C" is attached for informational purposes only and may be amended as provided in Article 7 or pursuant to this Section 21.2. Exhibits "D" and "E" are attached for information purposes only and may be amended as provided in those exhibits, respectively. Exhibit "F" is attached for informational purposes only and may be amended as provided in Section 5.3.

In witness of the foregoing, the Declarant has executed this Declaration this 15th day of July, 2019.

DECLARANT: LEWISVILLE SUMMIT, LLC, a Texas limited liability company

By: HC Operating, L.P., a Texas limited partnership, its managing member

By: HC Operating GP, LLC, a Texas limited liability company, its general partner

By: Phillip W. Huffines

Name: Phillip Huffines

Its: Managing Director

STATE OF TEXAS §

§

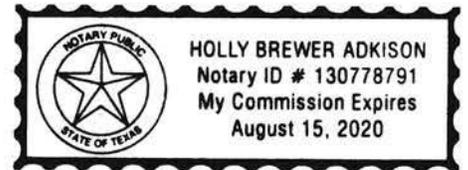
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 15th day of July, 2019, by Phillip W. Huffines, Managing Director of HC Operating GP, LLC, a Texas limited liability company, General Partner of HC Operating, L.P., a Texas limited partnership, Managing Member of LEWISVILLE SUMMIT, LLC, a Texas limited liability company, for and on behalf of said limited liability company.

Holly Brewer Adkison
Notary Public, State of Texas

[Notarial Seal]

[signatures continued on next page]



6140.01/CADocs/Declaration/070119/jps

EXHIBIT "A"

Land Initially Submitted to the Declaration

Tract 1

BEING a tract of land situated in the Stephen Riggs Survey, Abstract No. 1088, and the Wm. Brown Survey, Abstract No. 63, City of Lewisville, Denton County, Texas, and being a part of a called 113.581 acre tract of land described in the deed to Prologis Development Services Incorporated, recorded in Volume 4738, Page 523, Real Property Records of Denton County, Texas, and part of a called 4.186 acre tract of land described in the deed to Prologis Development Services Incorporated, recorded in Volume 4781, Page 1148, said Real Property Records, the same being a part of Lot 3, Block B in Lewisville Corporate Center, an addition to the City of Lewisville according to the re-plat thereof recorded in Instrument No. 2009-172, Plat Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at southeast corner of the herein described tract of land at a 1/2-inch iron rod found for the southeast corner of said Lot 3, at the intersection of the westerly right-of-way line of Summit Avenue, a variable width public right-of-way, and the northerly line of the Kansas City Southern Railroad 125 foot wide right-of-way;

THENCE departing the westerly right of-way line of said Summit Avenue, along the southerly line of said Lot 3, and along the said northerly line of the Kansas City Southern Railroad, the following three (3) courses:

1. North 69°05'00" West, a distance of 927.12 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for corner;
2. North 68°53'42" West, a distance of 41.95 feet to a 1-inch iron pipe found for corner;
3. North 69°03'24" West, a distance of 1298.67 feet to a point for corner that falls inside a power pole at the southwest corner of said Lot 3, and at the intersection of the easterly right-of-way line of McGee Lane, an 80 foot wide public right-of-way, and the said northerly line of the Kansas City Southern Railroad;

THENCE North 0°32'14" West, along the westerly line of said Lot 3, and along the easterly right-of-way line of said McGee Lane, a distance of 12.23 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ASSOC" found for corner at the beginning of a tangent curve to the right having a central angle of 2°44'23", a radius of 860.00 feet, a chord bearing and distance of North 0°49'58" East, 41.12 feet;

THENCE in a northeasterly direction, continuing along the westerly line of said Lot 3, and the easterly right-of-way line of said McGee Lane, and with said curve to the right, an arc distance of 41.12 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for the southwest corner of a called 5.485 acre tract of land described in the deed to Prologis OGL (2), LP., recorded in Instrument No. 2008-129595, said Real Property Records;

EXHIBIT "A"

Land Initially Submitted to Declaration

(continued)

THENCE South 69°03'52" East, departing the easterly right-of-way line of said McGee Lane, and crossing said Lot 3, along the southerly line of said 5.485 acre tract, a distance of 391.11 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for the southeast corner of said 5.485 acre tract;

THENCE North 20°56'35" East, continuing across said Lot 3, along the easterly line of said 5.485 acre tract, a distance of 224.95 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for corner;

THENCE South 69°03'24" East, departing the easterly line of said 5.485 acre tract, and continuing across said Lot 3, a distance of 1384.79 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for corner;

THENCE North 90°00'00" East, continuing across said Lot 3, a distance of 363.02 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for corner on the easterly line of said Lot 3, and on the westerly right-of-way line of aforesaid Summit Avenue, and at the beginning of a curve to the right having a central angle of 1°54'25", a radius of 512.97 feet, a chord bearing and distance of South 1°21'43" East, 17.07 feet;

THENCE along the easterly line of said Lot 3, and along the westerly right-of-way line of said Summit Avenue, the following six (6) courses:

1. In a southeasterly direction, with said curve to the right, an arc distance of 17.07 feet to a 1/2-inch iron rod found for corner at the end of said curve;
2. South 0°24'31" East, a distance of 47.49 feet to an 'X' scribed in concrete found for corner;
3. South 44°35'57" West, a distance of 16.97 feet to an 'X' scribed in concrete found for corner from which a 1/2-inch iron rod found for witness bears North 42°55' West, a distance of 2.5 feet;
4. South 0°24'03" East, a distance of 51.00 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ASSOC" found for corner;
5. South 45°24'03" East a distance of 33.99 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for corner;
6. South 0°25'40" East, a distance of 287.51 feet to the **POINT OF BEGINNING** and containing 12.626 acres (549,980 square feet) of land, more or less.

EXHIBIT "A"

Land Initially Submitted to Declaration

(continued)

Tract 2

BEING a tract of land situated in the Stephen Riggs Survey, Abstract No. 1088, City of Lewisville, Denton County, Texas, and being a part of a called 113.581 acre tract of land described in the deed to Prologis Development Services Incorporated, recorded in Volume 4738, Page 523, Real Property Records of Denton County, Texas, the same being a portion of Lot 2, and a portion of Lot 3, both out of Block B in Lewisville Corporate Center, an addition to the City of Lewisville according to the re-plat thereof recorded in Instrument No. 2009-172, Plat Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8-inch iron rod with a plastic cap stamped "KHA" set for the northwest corner of a called 5.485 acre tract of land described in the deed to Prologis OGL (2), LP., recorded in Instrument No. 2008-129595, Real Property Records of Denton County, Texas, on the westerly line of said Lot 3, same being the easterly right of way line of McGee Lane, an 80 foot wide public right-of-way;

THENCE North 00°24'56" West, along the westerly line of said Lot 3 and along the easterly right of way line of said McGee Lane, at a distance of 142.68 feet, pass a 1/2-inch rod with a plastic cap stamped "HALFF ASSOC" found for the northwest corner of said Lot 3, same being the westerly, southwest corner of said Lot 2, continuing along the easterly right of way line of said McGee Lane and along the westerly line of said Lot 2, for a total distance of 318.04 feet to a 5/8-inch iron rod with a plastic cap stamped "KHA" set for corner, from which, a 1/2-inch iron rod with a plastic cap stamped "GORRONDONA" found for the westerly, northwest corner of said Lot 2 bears North 00°24'56" West, 79.13 feet;

THENCE departing the easterly right of way line of said McGee Lane and crossing said Lot 2, the following three (3) courses:

1. North 89°35'03" East, a distance of 140.94 feet to a 5/8-inch iron rod with a plastic cap stamped "KHA" set for corner;
2. South 62°50'20" East, a distance of 1463.57 feet to a 5/8-inch iron rod with a plastic cap stamped "KHA" set for corner;
3. South 62°11'36" East, a distance of 280.62 feet to a 5/8-inch iron rod with a plastic cap stamped "KHA" set for a corner on the southerly line of said Lot 2, same being the northerly line of said Lot 3;

THENCE South 80°22'23" East, along the southerly line of said Lot 2 and along the northerly line of said Lot 3, a distance of 262.32 feet to a 1/2-inch iron rod found for the southeast corner of said Lot 2, same being the northerly, northeast corner of said Lot 3, on the westerly right of way line of Summit Avenue, a 100 foot wide public right of way, at the beginning of a curve to the left having a central angle of 00°58'07", a radius of 637.00 feet, a chord bearing and distance of South 20°56'28"

EXHIBIT "A"

Land Initially Submitted to Declaration

(continued)

East, 10.77 feet;

THENCE along the easterly line of said Lot 3 and along the westerly right of way line of said Summit Avenue, the following nine (9) courses:

1. In a southeasterly direction, with said curve to the left, an arc distance of 10.77 feet to an "X" scribed in concrete found for corner;
2. South 20°14'37" West, a distance of 16.28 feet to an "X" scribed in concrete found for corner;
3. South 24°45'23" East, a distance of 51.00 feet to an "X" scribed in concrete found for corner;
4. South 69°45'23" East, a distance of 34.56 feet to an "X" scribed in concrete found at the beginning of a curve to the right, having a central angle of 03°06'58", a radius of 625.04 feet, a chord bearing and distance of South 30°53'50" East, 33.99 feet;
5. In a southeasterly direction, with said curve to the right, an arc distance of 33.99 feet to a 1/2-inch iron rod with a plastic cap stamped "HALFF ASSOC" found at the beginning of a compound curve to the right having a central angle of 15°00'25", a radius of 525.00 feet, a chord bearing and distance of South 24°57'07" East, 137.12 feet;
6. In a southeasterly direction, with said curve to the right, an arc distance of 137.51 feet to a 1/2-inch iron rod with a plastic cap stamped "HALFF ASSOC" found at the beginning of a compound curve to the right having a central angle of 20°47'56", a radius of 237.00 feet, a chord bearing and distance of South 07°02'56" East, 85.56 feet;
7. In a southeasterly direction, with said curve to the right, an arc distance of 86.03 feet to a 1/2-inch iron rod with a plastic cap stamped "HALFF ASSOC" found at the beginning of a reverse curve to the left having a central angle of 07°34'22", a radius of 263.00 feet, a chord bearing and distance of South 00°26'09" East, 34.74 feet;
8. In a southeasterly direction, with said curve to the left, an arc distance of 34.76 feet to a 1/2-inch iron rod with a plastic cap stamped "HALFF ASSOC" found at the beginning of a reverse curve to the right having a central angle of 01°54'25", a radius of 512.97 feet, a chord bearing and distance of South 03°16'08" East, 17.07 feet;
9. In a southeasterly direction, with said curve to the left, an arc distance of 17.07 feet to a 5/8-inch iron rod with a plastic cap stamped "KHA" set for corner;

THENCE departing the westerly right of way line of said Summit Avenue and crossing said Lot

EXHIBIT "A"

Land Initially Submitted to Declaration

(continued)

3, the following two (2) courses:

1. North 90°00'00" West, a distance of 363.02 feet to a 5/8-inch iron rod with a plastic cap stamped "KHA" set for corner;
2. North 69°03'24" West, a distance of 1384.79 feet to a 5/8-inch iron rod with a plastic cap stamped "KHA" set on the easterly line of aforesaid 5.485 acre tract;

THENCE North 20°56'35" East, along the easterly line of said 5.485 acre tract, a distance of 292.50 feet to a 5/8-inch iron rod with a plastic cap stamped "KHA" set for the northeast corner of said 5.485 acre tract;

THENCE North 69°03'25" West, along the northerly line of said 5.485 acre tract, a distance of 366.07 feet to a 5/8-inch iron rod with a plastic cap stamped "KHA" set for an angle point on the northerly line of said 5.485 acre tract;

THENCE South 89°35'02" West, continuing along the northerly line of said 5.485 acre tract, a distance of 193.02 feet to the **POINT OF BEGINNING** and containing 19.789 acres (861,998 square feet) of land, more or less.

EXHIBIT "B"

Land Subject to Annexation

All those tracts or parcels of land lying and being in Denton County, Texas, and being contiguous to or situated within a one-half-mile radius of the property described in Exhibit "A" to this Declaration, as it may be amended from time to time.

Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Article 17 of this Declaration.

EXHIBIT "C"

Initial Rules

The following initial Rules shall be subject to amendment or modification in accordance with Section 7.2 of the Community Declaration for Heritage Trails.

1. **General.** All Units shall be subject to the restrictions on use, occupancy, and transfer of Units set forth in Section 7.1 of the Declaration, except as otherwise provided in that Section.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by the Board, the following activities are prohibited within the Community:

(a) repair or maintenance of motor vehicles, except that an occupant of a Unit may perform minor, routine maintenance to the occupant's passenger vehicle while parked inside the garage on the Unit;

(b) parking of any boat trailer, recreational vehicle, camping unit, bus, commercial use truck or van, or self-propelled or towable equipment or machinery of any sort, or any inoperable vehicles, on any public or private street within the Community or on any portion of a Unit other than in a garage, and parking of any other vehicle on a Unit in places other than the garage or driveway serving the Unit, except that (i) service and delivery vehicles and, during the construction of Improvements on a Unit, necessary construction vehicles, may be parked in the driveway of the Unit or on adjacent streets during daylight hours for any period of time reasonably necessary to provide service or to make a delivery to the Unit or the Common Area; and (ii) the Declarant and authorized Builders may park and use construction vehicles, trailers, and other equipment on a Unit or Common Area in connection with their construction, development, marketing, and sale of property in the Community.

(c) use of any garage for storage or other activities that preclude its use for parking of that number of vehicles for which it was designed;

(d) parking of any vehicle in such manner as to block or obstruct any public or private street, sidewalk, driveway, or mailbox, or the view of traffic;

(e) parking of any vehicle in the Community, regardless of size, that transports inflammatory or explosive cargo;

(f) parking of any vehicle on a public or private street within the Community unless all available spaces in both the garage and driveway serving the Unit are occupied with vehicles;

(g) raising, breeding, or keeping animals, except that dogs or cats, not to exceed a total of three, and a reasonable number of other small common household pets of the type typically confined to cages or tanks (e.g., birds, hamsters, fish, etc.) may be kept in the dwelling on a Unit. This shall not preclude the occupant of a Unit from taking a dog or cat outside the dwelling; however, those pets which are permitted to roam free or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law.

EXHIBIT "C"

Initial Rules (continued)

- (h) any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;
- (i) any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;
- (j) pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit, or involves erection of structures which are visible from property outside of the Unit;
- (k) any noxious or offensive activity that in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;
- (l) outside burning of trash, leaves, garbage, debris, or other materials, except such debris as may be permitted to be burned during the normal course of constructing a dwelling on a Unit;
- (m) use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;
- (n) use and discharge of firecrackers and other fireworks;
- (o) accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers (this provision shall not restrict composting of grass clippings, leaves, brush, or other vegetation in a manner approved pursuant to Article 5 of the Declaration;
- (p) discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;
- (q) any activities that materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Community or that use excessive amounts of water or which result in unreasonable levels of sound or light pollution;
- (r) conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article 5;
- (s) outdoor storage of any kind, except in areas, if any, approved pursuant to Article 5 and screened in an approved manner from view of neighboring property and streets;
- (t) outdoor airing or drying of clothes, rugs, bedding, or similar items unless screened from view of other properties in the Community by a screening method approved pursuant to Article 5;
- (u) garage sales or estate sales or other sales of personal or business property, except as part of an annual or semi-annual Community-wide event sponsored or sanctioned by the Association, if any. No signs, balloons, banners, or other items shall be placed in the Community or on adjacent rights-of-way

EXHIBIT "C"

Initial Rules

(continued)

advertising such sale, except that one sign, not to exceed four square feet per side or five feet in height, may be posted on the Unit on which the sale is being conducted to identify the location and hours of the sale;

(v) operation of a golf cart on public or private streets within the Community, except as the Association may specifically authorize and then subject to Texas law and such additional rules as the Board may adopt, which may include, without limitation, specific requirements as to registration, licensing, and size, type, color, and equipping of any golf carts operated within the Community and requirements as to the minimum age of operators.

(w) keeping of any plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community; and

(x) installation and removal of trees, shrubs and other landscaping by any person other than the Association, and any modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article 5 of the Declaration. This shall include, without limitation, signs, basketball hoops, and swing sets and similar sports and play equipment; garbage cans; woodpiles; above-ground swimming pools; docks, piers, and similar structures; hedges; walls; dog runs; animal pens; storage sheds, and satellite dishes or antennas, except that:

(i) an antenna designed to receive direct broadcast satellite 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 in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Antennas**") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Architectural Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Declarant and/or the Association shall have the right, without 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 a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus.

EXHIBIT "D"

Certificate of Formation of Heritage Trails Homeowners Association, Inc.

[see attached]



Office of the Secretary of State

CERTIFICATE OF FILING OF

Heritage Trails Homeowners Association, Inc.
File Number: 803353221

The undersigned, as Deputy Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Deputy Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 06/25/2019

Effective: 06/25/2019



A handwritten signature in black ink, appearing to read "Jose A. Esparza".

Jose A. Esparza
Deputy Secretary of State

Form 202

Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
FAX: 512/463-5709

Filing Fee: \$25



**Certificate of Formation
Nonprofit Corporation**

Filed in the Office of the
Secretary of State of Texas
Filing #: 803353221 06/25/2019
Document #: 897616080002
Image Generated Electronically
for Web Filing

Article 1 - Corporate Name

The filing entity formed is a nonprofit corporation. The name of the entity is :

Heritage Trails Homeowners Association, Inc.

Article 2 – Registered Agent and Registered Office

A. The initial registered agent is an organization (cannot be corporation named above) by the name of:

Lewisville Summit, LLC

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:

Street Address:

8200 Douglas Avenue, Suite 300 Dallas TX 75225

Consent of Registered Agent

A. A copy of the consent of registered agent is attached.

OR

B. The consent of the registered agent is maintained by the entity.

Article 3 - Management

A. Management of the affairs of the corporation is to be vested solely in the members of the corporation.

OR

B. Management of the affairs of the corporation is to be vested in its board of directors. The number of directors, which must be a minimum of three, that constitutes the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are set forth below.

Director 1: **Collin Huffines**

Title: **Director**

Address: **8200 Douglas Avenue, Suite 300 Dallas TX, USA 75225**

Director 2: **Curtis Fletcher**

Title: **Director**

Address: **8200 Douglas Avenue, Suite 300 Dallas TX, USA 75225**

Director 3: **Garrett Huffines**

Title: **Director**

Address: **8200 Douglas Avenue, Suite 300 Dallas TX, USA 75225**

Article 4 - Organization Structure

A. The corporation will have members.

or

B. The corporation will not have members.

Article 5 - Purpose

The corporation is organized for the following purpose or purposes:

to be the "Association" to which reference is made in the Community Declaration for Heritage Trails recorded or to be recorded by Lewisville Summit, LLC, a Texas limited liability company ("Declarant") in the office of the County Clerk for Denton County, Texas (as it may be amended, the "Declaration")

Supplemental Provisions / Information

The attached Addendum to Certificate of Formation of Heritage Trails Homeowners Association, Inc. is incorporated herein by reference.

[The attached addendum, if any, is incorporated herein by reference.]

Addendum to Cert of Formation-Heritage Trails Homeowners Assn-062519-jps.pdf

Effectiveness of Filing

A. This document becomes effective when the document is filed by the secretary of state.

OR

B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Organizer

The name and address of the organizer are set forth below.

Jo Anne P. Stubblefield 1979 Lakeside Parkway, Suite 250, Tucker, GA 30084

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Jo Anne P. Stubblefield

Signature of organizer.

FILING OFFICE COPY

**Addendum to
CERTIFICATE OF FORMATION
OF
HERITAGE TRAILS HOMEOWNERS ASSOCIATION, INC.**

The following Articles shall be added to and be part of the Certificate of Formation of Heritage Trails Homeowners Association, Inc.:

Article 6. Applicable Statute. The corporation is organized pursuant to the provisions of the Texas Nonprofit Corporation Law, as set forth in Chapters 20 and 22, and the provisions of Title 1 applicable to nonprofit corporations, of the Texas Business Organizations Code, as it may be amended (the "**Act**").

Article 7. Defined Terms. Capitalized terms used in this Certificate of Formation and not otherwise defined in this Certificate shall have the meanings set forth in the Community Declaration for Heritage Trails, recorded or to be recorded by Lewisville Summit, L.L.C., a Texas limited liability company (the "**Declarant**"), in the Office of the County Clerk of Denton County, Texas, as it may be amended (the "**Declaration**") and in the By-Laws of Heritage Trails Homeowners Association, Inc., as they may be amended ("**By-Laws**").

Article 8. Powers. The Association does not contemplate pecuniary gain or profit, direct or indirect, to its members. In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or By-Laws, may be exercised by its board of directors:

(a) all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of Texas in effect from time to time;

(b) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in this Certificate of Formation, the By-Laws, or the Declaration, including, without limitation, the following:

(1) to fix and to collect assessments and other charges to be levied pursuant to the Declaration;

(2) to manage, control, operate, maintain, repair, and improve property subject to the Declaration or any other property as to which the Association has a right or duty to provide such services pursuant to the Declaration, By-Laws, or any covenant, easement, contract, or other legal instrument;

(3) to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration, By-Laws, or other recorded covenant;

(4) to engage in activities which will actively foster, promote, and advance the common interests of all owners of property subject to the Declaration;

(5) to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

(6) to borrow money for any purpose;

(7) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(8) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests of such corporations, firms, or individuals;

(9) to adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such By-Laws may not be inconsistent with or contrary to any provisions of the Declaration; and

(10) to provide any and all services to the Community as the Board of Directors may determine to be necessary or desirable to supplement the services provided by local government.

(c) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 8 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article 8. None of the objects or purposes set out above shall be construed to authorize the Association to do any act in violation of the Act, and all such objects or purposes are subject to the Act.

Article 9. Membership. The Association shall be a membership corporation without certificates or shares of stock. The Declarant, for such period as is specified in the Declaration, and each Person who is the Owner of a Unit within the Community, shall be a member of the Association ("**Member**") and shall be entitled to such voting rights and membership privileges as are set forth in the Declaration and the By-Laws.

Article 10. Board of Directors. The business and affairs of the Association shall be conducted, managed, and controlled by a Board of Directors. The Board may delegate its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

The Board of Directors shall consist of not less than three nor more than seven directors, as determined in accordance with the By-Laws. The initial Board of Directors shall consist of three directors identified in this Certificate of Formation, who shall hold office until their successors are elected and have qualified, or until their resignation or removal. The number, the method of selection, removal, and filling of vacancies on the Board of Directors, and the term of office of members of the Board of Directors, shall be as set forth in the By-Laws.

Article 11. Indemnification of Directors. The Association shall indemnify its officers,

directors and committee members as and to the extent required by the By-Laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

Article 12. Action by Less Than Unanimous Consent. The Association and the Board of Directors shall be authorized to take action without holding a meeting or providing notice, by less than unanimous consent of the Members or directors, as applicable, in accordance with the provisions of the By-Laws, except where a meeting is required by Texas law.

Article 13. Dissolution. The Association may be dissolved only upon a resolution duly adopted by its Board of Directors and approved by the affirmative vote of Members entitled to cast not less than two-thirds (2/3) of the total votes in the Association. In addition, so long as the Declarant owns any property subject to the Declaration or which the Declarant may unilaterally make subject to the Declaration pursuant to the provisions of the Declaration, the written consent of the Declarant shall be required. The Association is authorized, upon its winding up, to distribute its assets in a manner other than as provided by Section 22.304 of the Texas Business Organizations Code, in accordance with a plan of distribution adopted pursuant to Chapter 22 of the Texas Business Organizations Code, which plan may, but shall not be required to, provide for distribution of the remaining property of the Association for tax-exempt purposes to an organization exempt under Section 501(c)(3) of the Internal Revenue Code, or described by Section 170(c)(1) or (2) of the Internal Revenue Code.

Article 14. Merger and Consolidation. The Association may merge or consolidate only upon a resolution duly adopted by its Board of Directors and the affirmative vote of Members entitled to cast not less than two-thirds (2/3) of the total votes in the Association. In addition, so long as the Declarant owns any property subject to the Declaration or which it may unilaterally make subject to the Declaration, the written consent of the Declarant shall be required.

Article 15. Amendments. This Certificate of Formation may be amended only upon a resolution duly adopted by the Board of Directors and approved by the affirmative vote of Members entitled to cast not less than two-thirds (2/3) of the total eligible votes of the membership; provided, the Members shall not be entitled to vote on any amendment to this Certificate of Formation adopted for the sole purpose of complying with the requirements of any governmental or quasi-governmental entity or institutional lender authorized to fund, insure or guarantee mortgages on individual Units, which amendments may be adopted by the Board of Directors. In addition, so long as the Declarant owns any property subject to the Declaration or which it may unilaterally make subject to the Declaration, the consent of the Declarant shall be required for any amendment.

EXHIBIT "E"

By-Laws of Heritage Trails Homeowners Association, Inc.

[see attached]

BY-LAWS
OF
HERITAGE TRAILS HOMEOWNERS ASSOCIATION, INC.

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BY-LAWS
OF
HERITAGE TRAILS HOMEOWNERS ASSOCIATION, INC.

Article 1
Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Heritage Trails Homeowners Association, Inc. (the "**Association**").

1.2. Principal Office.

The Association may have such offices in the Dallas-Fort Worth, Texas metropolitan area as the Board may determine or as the Association's affairs may require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the meaning ascribed to them in the Community Declaration for Heritage Trails recorded by Lewisville Summit, L.L.C., a Texas limited liability company (the "**Declarant**"), in the Office of the County Clerk of Denton County, Texas, as it may be amended (the "**Declaration**"). The term "**majority**," as used in these By-Laws, means those votes, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Article 2
Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association shall have two classes of membership: Owner Membership and Declarant Membership, as more fully described in the Declaration. Each Owner of a Unit automatically becomes a Member of the Association upon accepting title to a Unit. Additional provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

2.3. Membership Meetings.

(a) **General.** The first meeting of the Association's membership, whether an annual or special meeting, shall be held within one year after the conveyance of the first Unit to a Member other than the Declarant or a Declarant Affiliate.

(b) **Annual Meetings.** The Board shall schedule regular annual meetings of the Members to occur within 90 days before the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) **Special Meetings.** The President may call special meetings of the Members. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or within 30 days after receipt of a petition stating the purpose of the meeting and signed by Members holding at least 10% of the total votes in the Association.

2.4. Notice of Meetings.

(a) At least 10 but not more than 60 days before any meeting of the membership, the President, the Secretary, or the officers or other persons calling the meeting shall deliver or cause to be delivered to each Member a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including the general nature of any proposed amendment to the Declaration or By-Laws, any proposed budget changes, any proposal to remove a director, and any other matter required by *Tex. Business Organizations Code* §§ 22.253 and 22.303. If proxies are permitted, the notice shall also state the procedures for appointing proxies. If the meeting is to be held solely by electronic communications or if participation in the meeting is permitted by electronic communications, as described in Section 2.5 below, the notice shall state the form of communications system to be used for the meeting and the means of accessing the communications system. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 10.5.

(b) The Board shall set a record date for determining who is entitled to receive notice of a meeting, which shall not be earlier than the 60th day before the meeting date, and shall prepare an alphabetical list of the names of all Members entitled to vote, indicating (i) the address of each Member, and (ii) the number of votes each Member is entitled to cast at the meeting. Not later than the second business day after the date notice of the meeting is given, and continuing through the meeting, the list shall be made available at the Association's principal office or at a reasonable place in the municipality in which the meeting will be held, as identified in the notice of the meeting, for inspection and copying by Members entitled to vote at the meeting, or their agents, for the purpose of communication with other Members concerning the meeting. The Association shall also make the list available at the meeting for inspection at any time during the meeting or any adjournment of the meeting.

2.5. Electronic Participation in Meetings.

The Association may hold Association meetings and/or allow Members to participate in any Association meeting by conference telephone or similar communications equipment or another suitable electronic communications system, including videoconferencing technology or the Internet, if each person entitled to participate in the meeting consents to the meeting being held by means of that system and the system permits each person participating in the meeting to communicate concurrently with all other persons participating in the meeting. If voting is to take place at the meeting, the Association must implement measures to verify that every Member voting at the meeting by means of remote communication is sufficiently identified.

2.6. Waiver of Notice.

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. At-

tendance at a meeting by a Member or the Member's proxy shall be deemed a waiver by such Member and all co-Owners of such Member's Unit of notice of the time, date, and place thereof, unless the Member or the Member's proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If any Association meeting cannot be held because a quorum is not present, persons entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time at least 5 but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Members and proxies present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough persons to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Declaration or applicable law for specific actions, must approve any action taken.

2.8. Voting.

(a) **Voting Rights.** Members shall have such voting rights as are set forth in the Declaration, which provisions are specifically incorporated by this reference.

(b) **Notice of Vote.** Not later than the tenth (10th) day or earlier than the sixtieth (60th) day before the date of any election or vote, the Association shall give written notice of the election or vote to each Member entitled to vote.

(c) **Method of Voting.** A membership vote on any matter shall be conducted by written ballot signed by the Member entitled to cast the vote(s) represented by such ballot, unless the vote is to be conducted by secret ballot and the Association has adopted procedures to reasonably ensure that (i) the Member cannot cast more votes than he or she is eligible to cast; and (ii) the Association counts every eligible vote cast. Ballots on any matter may be cast in person at a meeting, by mail or electronic transmission (including facsimile transmission, electronic mail, or by means of an Internet website), or by any combination of those methods; provided, any ballot submitted electronically must be submitted in a manner that permits confirmation of the identity of the Member casting the vote and allows the Member to receive a receipt evidencing the transmission and receipt of the ballot.

A ballot to be submitted by mail or electronic transmission (an "**Absentee Ballot**") shall:

(i) describe each proposed action and providing an opportunity to vote for or against each proposed action; and

(ii) include the following language or such other language as may be authorized in lieu of the following language by future amendment of Texas Property Code Chapter 209:

By casting your vote via absentee ballot you will forego the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your vote(s) will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail.

Any solicitation of votes to be cast by Absentee Ballot shall include instructions for delivery of the completed ballot, including the delivery location. If the Absentee Ballot is posted on an Internet website, a notice of posting shall be sent to each Member entitled to vote on the matter with instructions for obtaining access to the website and casting such ballot.

(d) ***Tabulation of Votes.*** A ballot cast at a meeting shall revoke and supersede any ballot casting the same vote submitted by other means. A ballot cast prior to a meeting (i) may be counted as a Member present and voting for the purpose of establishing a quorum only for items appearing on the ballot; (ii) may not be counted if the Member entitled to cast the ballot attends the meeting to vote in person; and (iii) may not be counted if the motion was amended at the meeting so as to deviate from the exact language on the ballot previously cast.

The person who tabulates votes on any matter shall not disclose to any other person how any particular Member's votes were cast. No person who is a candidate for election or is the subject of any other Association vote, nor any person related to such person within the third degree of consanguinity or affinity, as determined under Texas Government Code Chapter 573, may tabulate ballots cast in any election or vote hereunder. No person other than a person designated to tabulate the votes shall be given access to the ballots cast other than as part of a recount process authorized by law.

Within 15 days after the date of any election, any Member may demand a recount of the votes in accordance with Texas Property Code §209.0057.

2.9. Proxies.

A Member may cast the vote for such Member's Unit in person or by proxy, subject to the limitations of Texas law and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, shall be signed by the Member or the Member's duly authorized attorney-in-fact, and shall be dated and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease (a) if the Member attends the meeting and votes in person, (b) upon conveyance of any Unit for which it was given, (c) upon the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (d) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Quorum.

Except as these By-Laws or the Declaration otherwise provide(s), the presence of Members or their proxies entitled to cast at least 20% of the total votes in the Association shall constitute a quorum at any membership meeting, and the casting of ballots representing at least 20% of the total votes in the Association shall constitute a quorum for any membership vote conducted by means other than at a meeting; provided, if a quorum is not established at any meeting when initially called or for any membership vote when initially conducted, then the quorum for any subsequent attempt to convene such meeting or conduct such membership vote shall be reduced to 10%. A ballot cast by mail or electronically may be counted for purposes of establishing a quorum only as to those action items appearing on the ballot.

2.11. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are prepared, reflecting all resolutions adopted and all other transactions occurring at such meetings. The minutes shall be kept with the Association's books and records.

2.12. Action Without a Meeting.

In accordance with the Certificate of Formation, any action that is required or that may be taken at a meeting of the Members may be taken without a meeting if:

- (a) the Association mails or delivers to every Member entitled to vote on the action:
 - (i) an Absentee Ballot meeting the requirements of Section 2.8(b), or
 - (ii) notice of the posting of such a ballot on an Internet website, with instructions for obtaining access to such website and casting the ballot; and
- (b) the number of votes cast equals or exceeds the quorum required for a meeting to consider such action; and
- (c) the number of votes cast in favor of the proposed action equals or exceeds the number of votes required to approve such action if the vote were conducted at a meeting.

Voting instructions or solicitations for any vote conducted in a manner other than at a meeting must be delivered at least 20 days before the deadline for casting ballots and must indicate the deadline for casting the ballot in order to be counted. The period for submitting Absentee Ballots to the Association shall not be more than 60 days. Each Absentee Ballot cast must be signed and dated by the Member; provided, electronic votes cast pursuant to Section 2.8(b) shall constitute written and signed ballots and written and signed ballots shall not be required for candidates in uncontested elections. A signed Absentee Ballot may not be revoked once submitted to the Association, except as provided in Section 2.8(a). The Board shall notify the Members of the results of the vote within 30 days after the expiration of the voting period.

Article 3

Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. **Governing Body; Qualifications.**

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Declarant Member, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within Heritage Trails.

If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time, except in the case of directors that the Declarant Member appoints.

3.2. **Number of Directors.**

The Board shall consist of three to five directors, as provided in Section 3.3.

3.3. **Selection of Directors; Term of Office.**

(a) ***Initial Board.*** The initial Board shall consist of the three directors identified in the Certificate of Formation, who shall serve until their successors are appointed or elected as provided in this section.

(b) ***Directors During Declarant Control Period.*** Except as otherwise provided in this subsection (b) and in Section 3.5, the Declarant Member may appoint, remove, and replace Board members until termination of the Declarant Control Period. During such period, the Members other than the Declarant shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Members are referred to as "**Owner Directors**"):

(i) At the next annual meeting following the date that Owners other than the Declarant, Declarant Affiliates, or Builders own 40% of the maximum number of Units permitted by applicable zoning for the property specifically described in Exhibits A and B to the Declaration or whenever the Declarant earlier determines, the President shall call for an election by which the Members other than the Declarant shall be entitled to elect one of the three directors. The remaining directors shall be appointees of the Declarant. The Owner Director shall be elected for a term of two years or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such Owner Director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) At the next annual meeting following the date that Owners other than the Declarant, Declarant Affiliates, or Builders own 60% of the maximum number of Units permitted by applicable zoning for the property specifically described on Exhibits A and B to the Declaration or whenever the Declarant earlier determines, the Board shall be increased to five directors and the President shall call for an election by which the Members other than the Declarant shall be entitled to elect two of the five directors. The Declarant shall appoint the remaining three directors. The Owner Directors shall be elected for a term of

two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such Owner Directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

Notwithstanding the above or the percentage of Units that may have been conveyed, Members other than that Declarant shall be entitled to elect at least one-third of the members of the Board no later than 10 years after the date of recording of the Declaration.

(c) *Directors After the Declarant Control Period.* At the next annual meeting following termination of the Declarant Control Period, the President shall call for an election by which the Members shall be entitled to elect all five directors. Three Owner Directors shall be elected to serve until the first annual meeting following their election and two Owner Directors shall be elected to serve until the second annual meeting following their election, as such Owner Directors determine among themselves.

Upon expiration of the term of office of each director appointed or elected pursuant to this subsection (c), the Members (including the Declarant in its capacity as the Member for Units which it owns) shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

3.4. Nomination and Election Procedures.

(a) *Nomination of Candidates.* At least 30 days prior to any election of directors by the Members, the Board may appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners, who shall serve until the close of the election for which they were appointed. If a Nominating Committee is appointed: (i) the names of the Nominating Committee members shall be announced in the notice of the election; and (ii) the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but at least a number equal to the number of positions to be filled by such election. In making its nominations, any Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates.

In addition to or in lieu of appointing a Nominating Committee, the Board may (and if there are more than 100 Units in Heritage Trails, it shall) give notice to the Members soliciting candidates interested in running for any position on the Board to be filled by such election. Such notice shall be given at least 10 days prior to disseminating any ballots for purposes of voting in an election of directors and must contain instructions for an eligible candidate to notify the Association of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request, which deadline may not be earlier than the 10th day after the date of such notice. The notice shall either be (i) mailed to each Member; or (ii) provided by e-mail to each Member who has registered an e-mail address with the Association, and posted (A) in a conspicuous manner reasonably designed to provide notice to the Members, either on the Common Area or on other property within Heritage Trails, with the permission of the owner of such property, or (B) on an Internet website maintained by the Association or on other Internet media. The Association shall include on the ballot for such election the name of each eligible candidate from whom the Association received a request to be placed on the ballot in accordance with this section.

All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) ***Election Procedures.*** At each election, voting shall be by ballot, which may be cast in any manner authorized by the Board consistent with Section 2.8. Each Member entitled to vote in such election under Section 3.3 may cast the vote assigned to such Member's Unit for each position to be filled by such election. Cumulative voting shall not be permitted. Notwithstanding this, if the number of candidates equals the number of positions to be filled and there are no nominations from the floor, any Member may move to accept the slate of candidates nominated by the Nominating Committee, and, if approved, no balloting shall be required. Otherwise, the candidate(s) receiving the most votes shall be elected.

3.5. Removal of Directors and Vacancies.

Any Owner Director may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Members, the Members shall elect a successor for the remainder of the term of such director.

If the Board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a director was convicted of a felony or crime involving moral turpitude not more than 20 years before the date the Board is presented with such evidence, the director shall be automatically considered removed from the Board and ineligible for future service on the Board.

In the event of the death, disability, removal or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term.

The Declarant shall have no unilateral right to remove or replace Owner Directors, and neither the Members nor the Board shall have any right to remove or replace directors that the Declarant appoints. The Declarant may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Declarant.

B. Meetings.

3.6. Organizational Meetings.

The Board shall hold an organizational meeting within 10 days following each annual meeting of the membership, at such time and place (subject to Section 3.10) as the Board shall fix.

3.7. Regular Meetings.

The Board shall hold regular meetings at such time and place (subject to Section 3.10) as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

3.8. Special Meetings.

The President, Vice President, or any two directors may call a special meeting of the Board.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the date and time of the meeting and, unless the meeting is being held solely by use of a conference telephone or other remote communications system in accordance with Section 3.10, the location of the meeting. Notice of any meeting which is conducted or which may be attended by conference telephone or other remote communications system in accordance with Section 3.10 shall specify the form of communications system to be used for the meeting and the means of accessing the communications system.

(b) The Board shall notify each director of Board meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the day of the meeting. Notices sent by personal delivery, telephone, or electronic communication shall be delivered at least 72 hours before the time set for the meeting. No notice shall be required for regular meetings conducted in accordance with a published schedule, provided notice of the schedule was delivered to each director in accordance with this subsection (b).

(c) Except as provided in Sections 3.14 and 3.15, Members shall be given notice of all Board meetings, setting forth the date, hour, place, and general subject of the meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

(i) mailed to each Member not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(ii) provided at least 72 hours before the start of the meeting by e-mail to each Member who has registered an e-mail address with the Association; and

(iii) posted either:

(A) in a conspicuous manner reasonably designed to provide notice to the Members, either on the Common Area or on other property within the Community, with the permission of the owner of such property; or

(B) on any Internet website maintained by the Association or other Internet media.

Each Member is responsible for registering their email address with the Association for purposes of receiving notices under subsection (c)(ii) and notifying the Association in writing of any change in such email address. If the Board recesses a Board meeting until the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent the requirements of this Article 3, Part B. If a Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner prescribed by subsection (c)(ii)(A) or (B) above within two hours after adjournment of the meeting being continued.

(d) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Place of Meetings; Participation by Telephonic or Electronic Means.

(a) All Board meetings shall be held within Denton County or an adjacent county, except for meetings held by telephonic or other communication system pursuant to this Section 3.10.

(b) A meeting of the Board, or of any committee the Board appoints, may be held using a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, provided that:

(i) all Board or committee members, as applicable, entitled to participate in the meeting consent to the meeting being held by means of that system;

(ii) the electronic or telephonic system used allows each director or committee member, as applicable, to communicate concurrently with every other director or committee member;

(iii) except for any portion of the meeting conducted in executive session as described in Section 3.13, all Members in attendance may hear all directors or committee members;

(iv) Members are allowed to listen using any electronic or telephonic communication method used or expected to be used by any director or committee member; and

(v) notice of the meeting includes instructions for accessing the meeting using any such communication method.

Participation in a meeting pursuant to this section shall constitute presence at such meeting, unless the participation is for the express purpose of objecting to the transaction of business at the meeting on the ground that the meeting has not been lawfully called or convened.

3.11. Quorum of Board; Voting.

(a) At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Texas law, these By-Laws, or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken.

(b) Board members may not vote by proxy. Voting may be conducted at a meeting or by written consents without a meeting in accordance with Section 3.14.

3.12. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that written minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

3.13. Open Meetings; Executive Session.

(a) Subject to the provisions of Section 3.13(b) and Section 3.14, all Board meetings shall be open to attendance by all Members or their representatives, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak. The Board shall make agendas for its meetings reasonably available for examination by all Members or their representatives prior to the meeting.

(b) Notwithstanding the above, any Board meeting may be adjourned and reconvened in executive session, and attendance at such meeting restricted to directors and such other persons as the Board may specifically invite and announce during the open portion of the Board meeting, to discuss pending or threatened litigation, personnel matters, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion of privacy of Owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of any Owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

3.14. Action Without a Formal Meeting.

(a) Except as provided in subsection (b), the Board may take action outside of a meeting, by written consent to such action in the manner authorized in the Certificate of Formation, or by voting by electronic or telephonic means, without prior notice to the Members, if each Board member is given a reasonable opportunity to express his or her opinion to all other board members and to vote or execute a consent to such action. Except as provided in Section 3.15, any action taken without notice to Members under Section 3.9 must be summarized orally at, and documented in the minutes of, the next Board meeting, including an explanation of any known actual or estimated expenditures approved at the meeting.

(b) Except as provided in Section 3.15, the Board may not consider or vote on any of the following matters except in an open meeting for which prior notice was given to the Members pursuant to Section 3.9: fines; damage assessments; initiation of foreclosure actions; initiation of enforcement actions (other than temporary restraining orders or violations involving a threat to health or safety); increases in assessments; levying of special assessments; suspension of a right of a particular Member before the Member has an opportunity to attend a Board meeting to present the Member's position, including any defense, on the issue; lending or borrowing money; the adoption or amendment of any of the Governing Documents which the Board is authorized to adopt or amend; the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent; the sale or purchase of real property; the filling of a vacancy on the Board; the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or the election of an officer.

3.15. Board Action During Development and Sale Period.

The requirements and limitations set forth in Sections 3.9(c), 3.10(a), 3.13, and 3.14 shall not apply to meetings of the Board conducted during the Declarant Control Period unless conducted for the purpose of:

- (a) adopting or amending the Governing Documents;
 - (b) increasing the amount of the Base Assessment or adopting or increasing a Special Assessment;
 - (c) electing Owner Directors or establishing or modifying the process for their election;
- or
- (d) changing the voting rights of Members.

Nothing in this Section 3.15 shall be construed to authorize the Board to take action on any matter listed in clauses (i) through (iv) in contravention of the approval that would otherwise be required under the Governing Documents or Texas law.

C. Powers and Duties.

3.16. Powers.

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do, or cause to be done on the Association's behalf, all acts and things except those which the Governing Documents or Texas law require(s) to be done and exercised exclusively by all or particular Owners or by the membership generally.

3.17. Duties.

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Unit's share of the Common Expenses and any Limited Common Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and, where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) opening bank accounts on the Association's behalf and designating the signatories required;

(f) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;

(g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(h) determining when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(j) paying the cost of all services rendered to the Association;

(k) keeping a detailed accounting of the Association's receipts and expenditures;

(l) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 10.4; and

(m) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Texas law, the Certificate of Formation, or these By-Laws.

Article 4

Officers

4.1. Officers.

The Association's officers shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the membership, to serve until their successors are elected.

4.3. Removal and Vacancies.

The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the Association's budgets as provided for in the Declaration, and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Article 5 Committees

5.1. General.

In addition to any Transition Committee appointed pursuant to Article 4 and such committees as the Declarant or Board may appoint pursuant to the Declaration, the Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article 9 of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

5.3. Lifestyle Committee.

In addition to such other committees as the Board may establish pursuant to this Article, the Board may appoint or allow the Members to elect a Lifestyle Committee to make recommendations to the Board regarding the use of all or a portion of the Enhancement Fees collected pursuant to the Declaration, consistent with the purposes for such fees set forth in the Declaration. Any such committee shall be composed of that number of persons determined by Board resolution, who shall be selected and serve for such terms as set forth in the Board resolution establishing such committee.

Article 6

Standards of Conduct; Liability, and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Texas law.

6.2. Liability.

In performing their duties, directors and officers shall be insulated from liability as provided for directors of corporations under Texas law and as otherwise provided by the Governing Documents. The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for any action taken or omitted in such capacities, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

6.3. Indemnification.

Subject to the limitations of Texas law, the Association shall indemnify every present and former officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Texas law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in Texas law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Conflicts of Interest.

(a) A director shall promptly disclose to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. Notwithstanding this, the fact that a director appointed by the Declarant may be employed by or otherwise transact business with the Declarant or a Declarant Affiliate, and that the Declarant may transact business with the Association or its contractors, shall not require disclosure as a potential conflict of interest hereunder.

(b) The Association shall not enter into a contract with a current Board member, a person related to a current Board member within the third degree by consanguinity or affinity, as determined under Chapter 573, Texas Government Code (a "Board Relative"), a company in which a current Board member has a financial interest in at least 51% of profits, or a company in which a Board Relative has a financial interest in at least 51% of profits, unless all of the following conditions are satisfied:

(i) the Board member, Board Relative, or company bids on the proposed contract and the Association has received at least two other bids for the contract from persons not associated with the Board member, Board Relative, or company, if reasonably available in the community;

(ii) the Board member is not given access to the other bids, does not participate in any Board discussion regarding the contract, and does not vote on the award of the contract;

(iii) the material facts regarding the relationship or interest with respect to the proposed contract are disclosed to or known by the Board and the Board, in good faith and with ordinary care, authorizes the contract by an affirmative vote of a majority of the directors who do not have an interest governed by this Section; and

(iv) the Board certifies that the other requirements of this Section 6.5 have been satisfied by a resolution approved by an affirmative vote of the majority of the Board members who do not have an interest governed by this Section.

(c) Except as provided in subsections (c) and (d), no director may transact business with the Association or any Association contractor within two years after the director's term expires.

(d) This Section does not apply to any contract entered into by the Association during the Development and Sale Period with the Declarant or any Declarant Affiliate.

6.6. Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Texas corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall be encouraged to complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audiotape, or in other format. The cost of such seminar shall be a Common Expense.

The Board may apply for and maintain, as a Common Expense, membership for the Association, its officers and directors, in the Community Associations Institute or any similar nonprofit organization that provides educational opportunities for Association directors, officers and managers in operation and management of Associations.

Article 7 Management and Accounting

7.1. Compensation of Directors and Officers.

The Association shall not compensate directors and officers for acting as such unless Members representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

7.2. Right of Declarant Member to Disapprove Actions.

So long as there is a Declarant Membership, the Declarant Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Declarant Member's sole judgment, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, interfere with development or construction of any portion of Heritage Trails, or diminish the level of services the Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

(a) **Notice.** The Association shall give the Declarant Member written notice of all meetings of the membership, the Board, and committees, and any actions proposed to be taken by any of them by written consent in lieu of a meeting. Such notice shall comply, as to Board meetings, with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) *Opportunity to be Heard.* At any such meeting, the Association shall give the Declarant Member the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant Member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

The Declarant Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Declarant Member may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Declarant Member shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

7.3. Managing Agent.

(a) The Board may employ for the Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.17. The Board may employ the Declarant or its affiliate as managing agent or manager.

(b) The Association shall record a management certificate as required by Texas Property Code Section 209.004.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Declarant Control Period unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Declarant Control Period upon not more than 90 days' written notice.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

7.4. Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) accounting and controls should conform to generally accepted accounting principles;
and

(ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

(d) The Board shall report in writing to the Members any indemnification of or advancement of legal expenses to any officer, director, or committee member in accordance with Texas Business Organizations Code § 8.152, as it may be amended.

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

7.6. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions, subject to the provisions of Section 6.5, if applicable.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

Article 8 Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration or Texas law, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator and/or the responsible Owner, if the alleged violator is not an Owner, with written notice, by certified mail, return receipt requested, to the Owner's last known address as shown in the Association's records:

(a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable;

(b) describing the proposed sanction to be imposed; and

(c) informing the alleged violator and/or Owner that:

(i) he or she has 30 days after receipt of the notice to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article 6, and if the hearing is to be held before a Covenants Committee, that the alleged violator has the right to appeal the decision of the Covenants Committee to the Board;

(ii) he or she may have special rights or relief related to the enforcement action under federal law, including the Service members Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if serving on active military duty;

(iii) the Association may recover from the Owner reasonable attorneys' fees and other reasonable costs incurred by the Association in enforcing the Governing Documents after the date of the hearing pursuant to subsection (c)(i), or if no hearing is requested, after the deadline for requesting a hearing, including such fees and costs incurred in collecting amounts, including damages, due to the Association if not paid by a date specified in such notice, or in the case of a violation of a curable nature, the violation continues after a date specified in such notice; and

(d) if the alleged violation is of a curable nature and does not pose a threat to public health or safety, informing the alleged violator that he or she may avoid the proposed sanction by curing the violation within a reasonable cure period stated in the notice, except that the Association shall have no obligation to provide a cure period if the alleged violator has been given notice of a similar violation within the preceding six months. A violation is considered a threat to public health or safety if it could materially affect the physical health or safety of an ordinary resident. A violation is considered not to be of a curable nature if it has already occurred and is not a continuous action (for example, holding a garage sale or other event prohibited by the Declaration or Rules which cannot be undone) or is not a condition capable of being remedied by affirmative action

The alleged violator shall respond to the notice of the alleged violation in writing within such 30-day period, regardless of whether the alleged violator intends to request a hearing or challenge the imposition of the proposed sanction, or the proposed sanction shall be imposed, except that no sanction shall be imposed if the alleged violator is entitled to an opportunity to cure the violation under subsection (d) above and cures the alleged violation within the time period provided. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 30-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session within 30 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 10 days, and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing. At the hearing, the alleged violator shall be afforded a reasonable opportunity to be heard and shall be entitled to make an audio recording of the hearing. If the alleged violator fails to appear, the hearing may be held in his or her absence. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the Board's or Committee's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three business days after the hearing.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed unless the violation is cured within the cure period stated in the notice.

8.3. Appeal.

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date.

Article 9 Miscellaneous

9.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Texas law or the Governing Documents.

9.3. Conflicts.

If there are conflicts among the provisions of Texas law, the Certificate of Formation, the Declaration, and these By-Laws, the provisions of Texas law, the Declaration, the Certificate of Formation, and these By-Laws (in that order) shall prevail.

9.4. Books and Records.

(a) **Document Retention.** The Board shall be responsible for compliance with the following document retention policy relating to the Association's books and records:

(i) the Certificate of Formation, By-Laws, Declaration, Supplements, and all amendments thereto shall be retained permanently;

(ii) financial books and records shall be retained for seven years;

(iii) account records of current owners shall be retained for five years;

(iv) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

(v) minutes of meetings of the owners and the board shall be retained for seven years; and

(vi) tax returns and audit records shall be retained for seven years.

(b) **Turnover of Books and Records.** Within 60 days after termination of the Declarant Control Period, the Declarant shall deliver to the Association all property, books and records of the Association in the Declarant's possession.

(c) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, the minutes of meetings of the Members, the Board, and committees, and other records of the Association, to the extent required by Texas Property Code §209.005 or other provisions of Texas law. The Board shall provide for such inspection to take place at the Association's office or at such other place within Heritage Trails as the Board shall designate. The Association shall not be required to make available for inspection or copying any records that identify:

(i) a particular Member's violation history, personal financial information, history of payments or delinquencies in paying amounts due to the Association, or contact information other than address; or

(ii) information related to an Association employee, including personnel files;

unless the Member or employee whose records would be disclosed has given his or her prior written approval to release such information or a court orders such records to be released or made available to the requesting Member or his or her representative.

(d) **Rules for Inspection.** A Member or the Member's authorized representative must submit to the Association a written request for access to inspect or copies of books and records under subsection (b), identifying the specific books and records or information desired. Such request shall be mailed by certified mail to the Association's mailing address or that of its authorized representative as reflected on the most current management certificate filed under Texas Property Code §209.004. The request must contain an election either to inspect the books and records before obtaining copies or to have the Association forward copies of the requested books and records and:

(i) if an inspection is requested, then on or before the 10th business day after the date the Association receives the request, the Association shall send written notice to the Member of dates during normal business hours that the Member or its authorized representative may inspect the requested books and records, to the extent those books and records are in the possession, custody, or control of the Association; or

(ii) if copies of identified books and records are requested, then the Association shall produce the requested books and records, to the extent required under subsection (c) and in the possession, custody, or control of the Association, on or before the 10th business day after the date the Association receives the request, except as otherwise provided by Texas Property Code §209.005.

The Board shall establish a records production and copying policy that prescribes the charges to be paid by the Member for compilation, production, and reproduction of information requested by such Member or its authorized representative under this Section, which charges may include all reasonable costs of materials, labor, and overhead, but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3 ("**Authorized Charges**"). No charge shall be made pursuant to such policy until the policy has been recorded as required by Texas Property Code §209.005 and §202.006. The Association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the Authorized Charges vary from the estimate, the Association shall submit a final invoice to the Member on or before the 30th business day after the date the information is delivered reflecting the variance and any balance or refund due. Any balance due which is not reimbursed to the Association before the 30th business day after the date the invoice is sent to the Member may be added to the Member's account as an assessment. Any amount paid in excess of Authorized Charges shall be refunded to the Member not later than the 30th business day after the date the invoice is sent to the Member.

(d) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

9.5. Notices.

(a) **Form of Notice and Method of Delivery.** Except as otherwise provided in the Declaration or these By-Laws or by Texas law, all notices, demands, bills, statements, or other communications to be given under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has provided a telephone facsimile number or an email address for use by the Association, by facsimile or electronic mail with written confirmation of transmission. It is the responsibility of each Member to give notice to the Association of any change in the Member's address, facsimile number, or email address. Where the Governing Documents or applicable law require notice to an Owner or Member, notice given to any Member or co-Owner of a Unit shall be deemed notice to all Members or co-Owners of such Unit.

(b) ***Delivery Address.*** Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the mailing address, telephone facsimile number, or e-mail address which the Member has designated by notice to the Secretary in accordance with this Section 9.5 or, if no such address or number has been designated, at the address of the Unit of such Member;

(ii) if to the Association, the Board, or a committee of either, at the mailing address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association has designated by notice to the Members in accordance with this Section 9.5; or

(iii) if to the Declarant, at the Declarant's principal address as it appears on the Secretary of State's records, or at such other address as the Declarant has designated by notice to the Association in accordance with this Section 9.5.

(c) ***Effective Date.*** Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

Until termination of the Declarant Control Period, the Board of Directors may amend these By-Laws for any purpose by a majority vote of the total number of directors. Thereafter, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members entitled to cast more than 50% of the total votes in the Association, and the consent of the Declarant Member, if such exists. Notwithstanding the above, no amendment to these By-Laws may conflict with the Declaration and the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment shall be prepared and signed by the President or Vice President and by the Secretary or Treasurer of the Association certifying that the requisite approval was obtained.

(c) Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within one year of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Declarant Member without the written consent of Declarant, the Declarant Member, or the assignee of such right or privilege.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Heritage Trails Homeowners Association, Inc., a Texas nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of Heritage Trails Homeowners Association, Inc. as duly adopted by resolution of the Board of Directors thereof on the ____ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ____ day of _____, 20__.

[SEAL]


Secretary

EXHIBIT "F"

Initial Architectural Guidelines

[see attached]