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**MASTER DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
SKYVIEW ADDITION**

This Master Declaration of Covenants, Conditions and Restrictions is made by Fox Development, L.P., a Texas limited partnership, hereinafter referred to as "**Declarant**".

WITNESSETH:

WHEREAS, Declarant is the owner and developer of Skyview Addition in Midlothian, Ellis County, Texas, according to the Plat recorded in Cabinet D, Slides 340 (Document No. 661527), Plat Records, Ellis County, Texas (the "**Property**" or the "**Subdivision**"); and

WHEREAS, Declarant desires to convey the Property subject to certain protective covenants and conditions, restrictions, liens and charges hereinafter set forth; and

WHEREAS, the Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property, Declarant hereby adopts and establishes the following declaration of reservations, restrictions, covenants, conditions and easements to apply uniformly to the use, improvement, occupancy, and conveyance of all the Property.

**NOW, THEREFORE**, Declarant hereby declares that all of the Property described above shall be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to the SKYVIEW ADDITION PROPERTY OWNERS ASSOCIATION, INC., a nonprofit corporation organized pursuant to the Texas Nonprofit Corporation Act, and its successors and assigns.

Section 2. "Board of Directors" or "Board" shall mean the elected and governing body of the Association.

Section 3. "Homebuilder" shall mean Value Builders, Inc. and any other homebuilder designated as such by Declarant.

Section 4. "Lot" shall mean a Lot with a completed duplex 2-family residence constructed thereon.

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Section 5. "Maintenance Areas" shall mean all property now or hereafter maintained by the Association including, without limitation, the "Common Areas" shown on the subdivision plat, if any, and any parks, drainage easement areas, streets, right-of-way, medians, entry strips, signs and lighting systems on or adjacent to the Property, and, as appropriate and landscaping on Lots.

Section 6. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 7. "Mortgage" shall mean a lien interest in a Lot given to a creditor as security for repayment of a loan made to the Owner.

Section 8. "Mortgagee" shall mean a beneficiary of a Mortgage.

Section 9. "Mortgagor" shall mean the trustor of a Mortgage.

Section 10. "Owner" shall mean and refer to one or more persons or entities who own the record title to any Lot which is a part of the Property, but excluding in all cases any party holding an interest merely as a security for the performance of an obligation.

Section 11. "Person" means a natural person, corporation, partnership, trustee, or other legal entity.

Section 12. "Property" shall mean and refer to the above-described real property in the City of Midlothian, Ellis County, Texas, and shall further refer to such additional property as may hereafter be annexed by Subsequent Amendment to this Declaration or which is owned by the Association.

Section 13. "Restrictions" shall mean, collectively, this Declaration, together with any and all Supplemental Declarations, as the same may be amended from time to time, the Association's Certificate of Formation and Bylaws and the Rules and Regulations described in Article IV, Section 1, from time to time in effect, as the same may be amended from time to time.

Section 14. "Subsequent Amendment" shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the property submitted by that Amendment to the provisions of this Declaration.

Section 15. "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions or restrictions which may be recorded hereafter in order to subject any portion of the Property to further covenants, conditions or restrictions.

## ARTICLE II

## THE ASSOCIATION

Section 1. Organization. Declarant shall, at such times as Declarant deems appropriate, cause the formation and incorporation of the Association. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Certificate of Formation and Bylaws or in this Declaration.

Section 2. Membership. Every Owner shall be deemed to have a membership in the Association, and shall remain a member thereof until the Owner's ownership ceases for any reason, at which time the Owner's membership in the Association shall automatically cease. Each Owner's membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of the Lot and may not be separated from such ownership. Whenever the legal ownership of a Lot passes from one person to another, by whatever means, it shall not be necessary in any instrument to provide for transfer of membership in the Association, and no certificate of membership will be issued.

Section 3. Voting. The Association shall have two classes of membership, Class "A" and Class "B", as follows:

- (a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Members, if any. Class "A" Members shall be entitled to one (1) vote in the Association for each Lot it owns in the Property. When more than one person holds an interest or interests in the Property, all such persons shall be Members, and the votes for such portion of the Property shall be exercised as they among themselves determine.
- (b) Class "B". The Class "B" Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class "B" Members shall be entitled to three (3) votes in the Association for each Lot it owns in the Property. The Class "B" membership shall cease and become converted to Class "A" membership on the happening of the earlier of the following events:
  - (1) Ten (10) years after the date of the first conveyance of a Lot to a person other than Declarant;
  - (2) Upon the conveyance of all the Lots with residences constructed upon them;
  - (3) When Declarant, in its sole discretion, so chooses.

Thereafter, the Class "B" Members shall be deemed to be Class "A" Members entitled to the vote(s) set out above. At such time, the Declarant shall call a

meeting, as provided in the Bylaws of the Association for special meetings to advise the membership of the termination of Class "B" status.

### **ARTICLE III** **MAINTENANCE**

Section 1. Association's Responsibility. The Association, in the sole discretion of its Board, may maintain and keep in good repair the Maintenance Areas in the Property, the right-of-way, medians, entry strips, signs and lighting systems whether owned by the Association, by an Owner, or by the public, so long as the rights-of-way or entry strips are within or adjacent to the Property. The Association shall maintain, repair, and replace the Common Areas, if any, in the Property. To enhance the appearance of the subdivision and the Lots, the Association shall also be responsible for maintaining the front and side yards in front of any privacy fencing, including mowing, pruning trees and shrubs and maintaining plants in existing and defined beds. The cost of the maintenance provided for in this Section 1 shall be a common expense of the Association.

Section 2. Owner's Responsibility. Owners and occupants (including lessees) of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to maintain the back yards, including mowing, pruning trees and shrubs and maintaining plants in existing and defined beds, and shall keep that Lot safe and clean at all times. All improvements upon any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof. Such maintenance includes, but is not limited to, the following:

- (a) Prompt and regular removal of all litter, trash, refuse, debris, and wastes, including any such items resulting from storm, flood or other casualty.
- (b) Regular watering of all lawn, trees, shrubs and plants as necessary to keep them alive and healthy.
- (c) Keeping parking areas and driveways in good repair.
- (d) Complying with all applicable governmental laws, ordinances, rules and regulations.

Section 3. Enforcement. If, in the opinion of the Board of Directors, any Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Board may give such Owner or occupant written notice of such failure and such Owner or occupant must within ten (10) days after receiving such notice perform the care and maintenance required. Should any Owner or occupant fail to fulfill this duty and responsibility within such period, then the Board, through its authorized agent or agents, shall have the right and power to enter into such Owner's Lot and perform such care and maintenance without liability for damages for wrongful entry, trespass or otherwise to any person. The Association may levy a special assessment pursuant to Article V of this Declaration for the cost of such work which shall be the joint and personal

obligation of the Owners and occupants (including lessees) of the Lot in which such work is performed and shall be enforced as provided in Article VI of this Declaration.

**ARTICLE IV**  
**POWERS AND AUTHORITY OF THE ASSOCIATION**

Section 1. Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. The Board, acting on behalf of the Association, shall have the power and authority necessary or appropriate to manage the property, business and affairs of the Association and to exercise all rights, duties and privileges granted to the Association by law or this Declaration including, without limitation, the powers described below:

- (a) Rules and Regulations. The Association, through its Board, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration, but may serve to clarify or enhance the protections and purposes of the Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances.
- (b) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.
- (c) Records. To keep books and records of the Association's affairs.
- (d) Assessments. To levy assessments as provided in Article VI.
- (e) Right of Entry and Enforcement. To enter at any time in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and upon the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may

deem necessary or expedient to enforce the Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

- (f) Fines for Violation of the Restrictions. To levy fines, not to exceed \$200.00 per violation per day, against a Member who violated one or more of the Restrictions. The Board shall adopt a schedule of fines, procedures for notices of violations, implementation of fines and appeal to the Board of any fine levied against a Member. The procedure shall be consistent with the provisions of Texas Property Code Chapter 209 as the same may be amended from time to time. Failure of a Member to pay fines may result in the suspension of a Member's rights to use the Association amenity areas or such other reasonable sanctions as may be allowed by law. Delinquent fines shall be deemed personal obligations of a Member and shall be deemed an Assessment subject to the Assessment Lien and Foreclosure provisions of Paragraph 7.7. Proceeds derived from fines shall be used by the Association as directed by the Board of Directors.
- (g) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (h) Manager. To retain and pay for the services of a person or firm (the "**Manager**") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.
- (j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, the Certificate of Formation or Bylaws of the Association.
- (k) Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to provide any service or perform any function on behalf of Declarant, the Association or any Person.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interest within the Property conveyed to it by the Declarant.

Section 3. Association Documents. The Association shall make available for inspection free of charge during business hours and under normal circumstance current copies of the Declaration, Certificate of Formation, Bylaws, Rules and Regulations, books, records and financial statements of the Association to Owners and Mortgagees. Copies of such documents may be requested and obtained in the manner provided by any document policy adopted by the Board of Directors, including the right of the Association to charge reasonable fees for such documents in the manner provided by law. Any holder, insurer or guarantor of a first Mortgage shall be entitled, without charge, upon written request, to an audited financial statement for the immediately preceding fiscal year within a reasonable time following such request.

## **ARTICLE V** **INSURANCE**

Section 1. Association Insurance Requirements. The Association shall obtain and retain directors and officers liability insurance of not less than \$1,000,000.00 per occurrence. In addition, the Association shall require certificates of insurance from all contractors who perform maintenance and repair services for the Association on Maintenance Areas and Improved Lots.

## **ARTICLE VI** **ASSESSMENTS**

Section 1. Maintenance Fund. The Board of Directors shall establish a fund (the "**Maintenance Fund**") into which shall be deposited all monies paid to the Association and from which disbursement shall be made in performing the functions of the Association under the Declaration, the Bylaws, or the Certificate of Formation.

Section 2. Initial Assessment. At Closing on the purchase of a Lot from the Declarant/Developer and at each subsequent Closing, the Buyer shall pay an initial assessment of \$300.00, which shall be deposited into the Maintenance Fund.

Section 3. Regular Annual Assessments. There are hereby created assessments for common expenses as may be from time to time specifically authorized by the Board of Directors. Regular annual assessments shall be for expenses determined by the Board of Directors to be for the benefit of the Association as a whole. Each Owner, by acceptance of a deed or recorded contract of sale, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest at the rate of twelve percent (12%) per annum, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose, and the Owner's grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed, except no first Mortgagee that obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors.

Section 4. Computation of Assessment. The regular annual assessment for calendar years 2017 and 2018 shall be \$600 per Lot, to be prorated for the remainder of the year in which it is purchased from a Homebuilder. For years 2019 and thereafter, it shall be the duty of the Board of Directors, to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause a copy of the budget, and the amount of the regular annual assessment to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to a meeting of members to discuss the budget. The budget and the assessment shall become effective unless disapproved at the meeting by a vote of at least a majority of both classes of the total Association membership. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board of Directors fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 5. Special Assessments. If the Board, at any time, or from time to time, determines that the regular annual assessment assessed for any period is insufficient to provide for the continued operation of the Maintenance Areas, timely payment of its bills, and the maintenance, repair or replacement of the Maintenance Areas for which the Association is responsible, then the Board shall have the authority to levy such special assessments as it shall deem necessary to provide for such continued maintenance, repair or replacement and operation. Without limiting the generality of the foregoing, such special assessment may be assessed because of casualty, condemnation, or other loss to any part of the Maintenance Areas for which the Association is responsible, or to make up for any deficiencies caused by nonpayment of assessments by Owners. All special assessments shall be payable (and the payment hereof may be enforced) in the manner herein specified for the payment of regular annual assessments. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provision of the Declaration, the amendments thereto, the Bylaws, the Certificate of Formation, and the Association Rules and Regulations, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing.

Section 6. Assessment Property. The only portions of the Property which shall be subject to the assessments provided for in this Declaration shall be a Lot sold by a Homebuilder.

Section 7. Division of Assessments Among Owners. Assessments made by the Association under Section 2 and uniform special assessments described in Section 4 shall be equal and uniform. The pro rata percentage of each assessment shall be calculated by dividing the number one by the total number of Lots at the time the assessment is levied.

Section 8. Late Charges. If any assessment made pursuant to this Article is not paid within thirty (30) days after it is due, the Owner shall pay a late fee of \$25 for each thirty (30) days the assessment remains delinquent; provided, however, such charge shall never exceed the maximum charge permitted under applicable law. In the event of default in the payment of any such assessment, the Owner of the Lot shall be obligated to pay interest on the amount of the assessment from the due date at a percentage rate of twelve percent (12%) per annum, unless



otherwise established by Board resolution, together with all costs and expenses of collection, including reasonable attorney's fees.

Section 9. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article or any other Article in this Declaration but unpaid, together with interest and the cost of collection, including attorney's fees as provided in Section 7 shall thereupon become a continuing lien and charge on the Lot covered by such assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for:

- (a) All liens for taxes or special assessments levied by the applicable city, county or state government, or any political subdivision or special district thereof;
- (b) All liens securing all amounts due or to become due under any mortgage vendor's lien or deed of trust filed for record prior to the date any assessment became due and payable; and
- (c) All liens including, but not limited to, vendor's liens, deeds of trust and other security agreements which secure any loan made by any lender to a Member for any part of the purchase price of any Lot when the same are purchased from a builder, or for any part of the cost of constructing, repairing, adding to or remodeling any Improvements utilized for residential purposes.

The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination may be signed by an officer of the Association. To evidence the aforesaid assessment lien, the Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of the county in which the Lot is located. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by either (i) the Association foreclosing against the defaulting Owner's Lot in like manner as a mortgage on real property subsequent to the recording of a notice of assessment lien as provided above, or (ii) the Association instituting suit against the Owner personally obligated to pay the assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to such Mortgagee any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.

After notice and hearing, the Board may temporarily suspend the voting rights of a Member who is in default of payment of any assessment.

Section 10. Mortgage Protection. Notwithstanding any other provision of this Declaration, no lien created under this Article or under any other Article of this Declaration, nor any lien arising by reason of any breach of the rules and regulations, nor the enforcement of any provision of this Declaration or of any Subsequent Amendment shall defeat or render invalid the rights of the beneficiary under any recorded Mortgage of first and senior priority now or hereafter given upon any portion of the Property made in good faith and for value. However, after a conveyance in lieu of foreclosure, such property shall remain subject to this Declaration, and the Owner thereof shall thereafter be liable for all assessments levied after such completion of foreclosure or conveyance in lieu of foreclosure. No amendment of this Section 9 shall affect the rights of any Mortgagee whose Mortgage has the first and senior priority as provided herein, unless the Mortgagee consents in writing to the amendment thereof, or unless the amendment was filed of record prior to the recording of the Mortgage, provided, however, that after foreclosure, or conveyance in lieu of foreclosure, the portion of the Property which was subject to such Mortgage shall be subject to such amendment.

Section 11. Subordination. The lien assessments provided for herein shall be subordinated to any loan used by Declarant for the acquisition, development and construction of the lots and homes within the Property, and the lien of any first Mortgage if the Mortgage was recorded before the delinquent assessment became due. However, the sale or transfer of any portion of the Property subject to assessment pursuant to Mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such property subject to assessment from liability for any assessment thereafter becoming due or from the lien therefore.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Designation of Committee. An Architectural Control Committee (the "Committee"), shall consist of not less than three (3) members who shall be natural persons. The initial Committee shall consist of Peter Thomas, Glen Anderson and Douglas Stewart. Persons serving on the Committee shall serve until removed by the Board of Directors or until a resignation is effective. Any member may resign at any time for any reason and such resignation shall be effective upon notice thereof to the Board. Subsequent members of the Committee shall be appointed by the Board of Directors. Until the occurrence of one of the events described in Article II, Section 3(b), whichever is earlier, the appointment of the members of the Committee must be approved by Declarant, and during such period any and all members of the Committee can be removed by Declarant with or without cause. The Board shall have the exclusive right and power at any time and from time to time to fill vacancies on the Committee. The Committee shall act by majority vote of its members.

Section 2. Function of Architectural Control Committee. No improvement, as that term is hereinafter defined, except those constructed by the Declarant, shall be erected,

constructed, placed, altered (by addition or deletion), maintained or permitted to remain on any portion of the Property until plans and specifications, and any other information pertaining thereto, in such form and detail as the Committee may deem necessary, shall have been submitted to and approved in writing by the Committee. The decision of the Committee shall be final, conclusive, and binding upon the applicant.

Section 3. Content of Plans and Specifications. The plans and specifications to be so submitted and approved shall include the following:

- (a) A site plan showing the location of all improvements, structures, walks, driveways, fences, and Lot corners and the corners of proposed improvements, and a grading plan and a drainage plan. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the Lot contours is contemplated.
- (b) Exterior elevations showing all sides of the proposed improvements.
- (c) Exterior materials, colors, textures and shapes.
- (d) Structural design and construction plans.
- (e) Landscaping plan, including walkways, fences and walls, elevation changes, sprinkler systems, vegetation and ground cover.
- (f) Parking area and driveway plan.
- (g) Any exterior illumination, including location and method.
- (h) Any fire protection systems required by applicable government law, ordinance or regulation.
- (i) Signs, including size, shape, color, location and materials.
- (j) Mailboxes, if any.

Section 4. Definition of "Improvement". The term "improvement" shall mean and include all buildings and roofed structures, fences, walls, mass plantings, driveways, signs; any new exterior construction or exterior improvement; all outbuildings; and both original improvements and all later changes and improvements. The term "improvement" shall not include garden shrub or tree replacements or any other replacement or repair of any magnitude which does not change exterior colors or exterior appearances. Further, the term "improvement" shall not include repairs and/or replacements of improvements damaged by fire or other casualty, subject to the following:

- (a) The damaged improvements to be repaired or replaced were approved by the Committee as provided in Section 2.

- (b) The repairs or replacements will effect a restoration of the damaged improvements to substantially the same condition as existed prior to such damage, with no material change from the original plans and specifications approved by the Committee as provided in Section 2.
- (c) Plans and specifications for the repairs or replacements, similar in form and detail to the original plans and specifications for the items to be repaired or replaced, together with a certificate signed by a duly licensed architect stating that the repairs or replacements will effect a restoration of the damaged improvements to substantially the same condition as existed prior to such damage with no material change from such original plans and specifications, shall have been submitted to the Committee at least fifteen (15) days prior to the date construction of such repairs or replacements is commenced.

Section 5. Variances. In case of special size or shape of site or condition of terrain or special use, operation or treatment not provided for within the general conditions of the protective covenants herein contained or for any other reason, the Committee may, in its discretion, permit such variances or exceptions to the restrictions herein contained as it deems necessary or desirable.

Section 6. Failure of the Committee to Act. The Committee shall approve such plans and specifications or reject them as being inadequate within thirty (30) days after receipt thereof. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Committee may reject them as being inadequate or may approve part, conditionally or unconditionally, and reject the balance. If the committee shall fail to respond to any Owner within thirty (30) days after its receipt of any original or revised plans and specifications submitted hereunder, such plans and specifications shall be deemed to have been disapproved by the Committee.

Section 7. Limitation of Liability Neither Declarant, the committee, nor any of the members of the Committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any owner of land affected by this Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications.

Section 8. Inspection of Work.

- (a) Completed Work. Inspection of completed work and correction of defects therein shall proceed as follows:
  - (1) Upon the completion of any improvement for which the final plans and specifications were approved under this Declaration, the Owner shall give written notice of completion to the Committee.

- (2) Within such reasonable time as the Committee may set in its rules but not to exceed fifteen (15) days thereafter, the Committee or its duly authorized representative may inspect such improvement. If the Committee finds that such work was not done in strict compliance with all approved plans and specifications, it shall notify the Owner in writing of such noncompliance within five (5) days, specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same.
- (3) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Committee shall notify the Board of Directors in writing of such failure. Upon notice to the Owner, the Board shall conduct a hearing at which it shall determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days following the announcement of the Board ruling. If the Owner does not comply with the Board's ruling within such period, the Board, at its option, may either remove the non-complying improvement, remedy the noncompliance or seek appropriate injunctive relief and other available legal redress from a court of competent jurisdiction, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an assessment against such Owner and improvement in question and the Lot upon which the same is situated for reimbursement and the same shall constitute a personal obligation of the Owner of such Lot, a lien upon such Lot and improvement, and be enforced as provided in this Declaration.
- (4) If for any reason after receipt of said written notice of completion from the Owner, no inspection is made or any noncompliance is not found within the period provided above in Subparagraph (2) of this Section 8(a), the improvement shall be deemed to be in accordance with said approved plans and specifications. In the instances where an inspection has occurred and the improvements are in compliance, upon request, the Committee shall issue a "Certificate of Compliance" in a form suitable for recording. The certificate shall identify the Lot and the improvement, and shall certify only that the improvements thereon are not in violation of the covenants of the Declaration, or if they are in violation, that a variance has been granted. THE CERTIFICATE SHALL NOT BE CONSTRUED TO CERTIFY THE ACCEPTABILITY, SUFFICIENCY OR APPROVAL BY THE ARCHITECTURAL CONTROL COMMITTEE OF THE ACTUAL DESIGN OR CONSTRUCTION OF THE IMPROVEMENTS OR OF THE WORKMANSHIP OR MATERIALS THEREOF. THE OWNER IS HEREBY NOTIFIED THAT THE CERTIFICATE IN NO WAY WARRANTS THE SUFFICIENCY, ACCEPTABILITY OR

APPROVAL BY THE ARCHITECTURAL CONTROL COMMITTEE OF THE DESIGN, CONSTRUCTION, WORKMANSHIP, MATERIALS OR EQUIPMENT OF THE IMPROVEMENTS. RECORDATION OF SUCH A CERTIFICATE SHALL BE AT THE EXPENSE OF THE OWNER OF THE IMPROVED LOT.

- (b) Work in Progress. The committee may inspect all work in progress give notice of noncompliance as provided above in Subparagraph (2) of this Section. If the Owner denies that such noncompliance exists, the procedures set out in Subparagraph (3) of this Section shall be followed, except that no work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Board should ultimately find that noncompliance exists.

Section 9. Enforcement. Declarant or the Board of Directors, on behalf of the Association, shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction the decisions of the Committee established in this Article. This Article may not be amended without Declarant's written consent, so long as Declarant owns any land subject to this Declaration.

#### **ARTICLE VIII** **USE RESTRICTIONS AND PROTECTIVE COVENANTS**

Section 1. General Restrictions.

- (a) Noxious Uses. The land and improvements located on each Lot shall not be used so as to disturb the neighborhood or occupants of adjoining property, or to constitute a nuisance or violate any public law, ordinance or regulation from time to time applicable thereto. Nor shall such land and improvements be used for any purposes which will create or emit any objectionable, offensive or noxious odors, dust, gas, fumes or other such material.
- (b) Animals. No animals or birds, other than a maximum of four (4) generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be visible from neighboring property, without approval by the Architectural Control Committee. Upon the written request of any Owner, the Board of Directors of the Association shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal or bird is a generally recognized house or yard pet, or a nuisance. Upon the Board's sole determination that a particular animal is not allowed in the subdivision, as it is in violation of one or more provisions of these Restrictions, the Board may order the removal of the animal from the subdivision and the Owner shall thereafter

permanently remove the animal from the subdivision within ten(10) days of the Owner's receipt of the Board's order of removal.

- (c) Antennas. Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed on any Lot in a location which is not visible from any street, unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a location visible from the street as approved by the Architectural Review Committee. The ARC may require as much screening as possible while not substantially interfering with reception. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Properties. No satellite dishes shall be permitted which are larger than 1 meter in diameter. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted placed, allowed, or maintained upon any portion of the Property which transmit, rather than receive, television, radio, satellite or other signals. The Declarant by promulgating this section is not attempting to violate the Telecommunications Act of 1996 (the "Act"), as may be amended from time to time. This section shall be interpreted to be as restrictive as possible while not violating the Act.
- (d) Temporary Occupancy. No trailer, basement or any incomplete building, tent, shack, garage or barn and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction, repair or remodeling of a dwelling on any Lot shall be moved immediately after the completion of construction.
- (e) Trailers, Boats and Motor Vehicles. Without prior approval of the Architectural Control Committee, no mobile home, trailer of any kind, truck, camper, motorized recreational vehicle, permanent tent or similar structure, boat or inoperable motor vehicle of any type shall be kept, placed, maintained, constructed, reconstructed or repaired upon any property or street or private driveway in such a manner as will be visible from neighboring property, private drive, or a public street; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvements approved by the Architectural Control Committee. In addition, no motor vehicle of any type, whether operable or inoperable, may be constructed, reconstructed or repaired upon any property or street or private driveway in such a manner as will be visible from neighboring property for three (3) consecutive days.
- (f) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise

therefrom, so as to render any such property or portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property.

- (g) Repair of Buildings. No building or structure upon any property within any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.
- (h) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Association, which may include the requirement that all containers will be disposable. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and, then, only the shortest time reasonably necessary to effect such collection.
- (i) Clothes Drying Facilities. Outside clotheslines or other facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed or maintained exclusively within a fenced yard or otherwise concealed and not visible from neighboring property.
- (j) Sidewalk Encroachments. No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk or other pedestrian way from ground level to a height of seven feet (7') without the prior approval of the Architectural Control Committee.
- (k) Right of Access. During reasonable hours Declarant, any member of the Architectural Control Committee, or member of the Board of Directors or any other representative of any of them, shall have the right to enter upon and inspect any Lot for the purpose of ascertaining whether or not the provisions of these restrictions have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.
- (l) Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.
- (m) Machinery and Equipment. Without approval by the Board, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in Johnson County, Texas, in connection with the use, maintenance or construction of residential improvements; provided, however, such machinery or equipment may be so placed, operated or maintained by any governmental, or quasi-



governmental agency or a public utility. Nothing herein shall prevent the use of appliances, tools or machines for usual and customary household purposes.

- (n) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which will induce, breed or harbor plant diseases or noxious insects.
- (o) Restriction on Further Subdivision. Except as expressly provided for herein for the benefit of Declarant, no Lot shall be further subdivided and no portion less than all of any such Lot nor any easement or other interest therein, shall be conveyed by any Owner, except, however, that easements may be granted to any governmental or quasi-governmental agency or a public utility.
- (p) Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the Property or the subdivision or carried by any person or by any other means displayed within the Property or the subdivision except the following:
  - (1) For Sale Signs. An Owner may erect one (1) sign not exceeding 2 feet by 3 feet in area, fastened only to a stake in the ground and extending not more than 3 feet above the surface of the ground advertising the property for sale or for lease.
  - (2) Declarant/Builder Signs. Signs or billboards may be erected by the Declarant or any Homebuilder as Declarant shall desire and approve.
  - (3) Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 90 days in advance of the election to which they pertain and are removed within 15 days after the election.
  - (4) School and Business Signs. Emblems or bumper stickers advertising a resident's school or business mounted upon vehicles parked or driven in the subdivision.

Declarant or its agents will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing requirements; and in so doing, will not be subject to any liability in connection with such removal.

- (q) Tanks. No elevated tanks shall be erected.
- (r) Increased Insurance Costs. Nothing shall be done on any Lot which will result in the increase of fire and extended coverage insurance premiums thereon or the cancellation of such insurance.

- (s) Waste. No waste shall be committed on any Lot.
- (t) Lighting. No lighting or illumination shall be placed upon any Lot in such a manner as to cause unreasonable glare or illumination on any other Lot.
- (u) Rights of Declarant. Nothing herein shall be construed as prohibiting Declarant, its officers, employees or agents, from inviting any person or the general public to enter any residence situated upon any Lot owned by Declarant for the purpose of making a sale or lease thereof or from using such residence as a model for the purpose of making a sale or sales or from maintaining a sales force upon any Lot owned by Declarant which remains unsold.
- (v) Fencing. All fences shall be no greater than six feet (6') high. Fences shall be constructed of new wood and/or masonry material, wrought iron, or such other material approved by the Architectural Control Committee.

Section 2. Use Restrictions.

- (a) All Lots shall be used solely for single-family residential purposes.
- (b) No Lot or improvements thereon shall be leased or rented for less than thirty (30) days. Any lease or rental agreement must be in writing and must be subject to this Declaration, the Bylaws and the rules and regulations. Except for the foregoing, nothing in this Declaration shall prevent the rental of any Lot and improvements thereon by the Owner thereof for residential purposes.

Section 3. Building Restrictions. Each dwelling (2 dwellings per Lot) shall have a garage suitable for parking at least one (1) standard size automobile.

**ARTICLE IX**  
**MORTGAGEE PROTECTION CLAUSES**

Section 1. Rights of Mortgagees. No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any Mortgage on any Lot made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, unless otherwise provided herein.

Section 2. Notice to Mortgagees, Insurers and Guarantors. All Mortgagees including FNMA and FHLMC that have filed with the Association an appropriate written request which includes its name and address as well as the Lot encumbered by its Mortgage (the "Eligible Mortgagees") as well as all insurers of a Lot and governmental guarantors of a Mortgage that

have filed with the Association such a appropriate written request ("Eligible Insurers" and "Eligible Guarantors", respectively), shall be entitled to receive the following notices in writing from the Association:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee, Eligible Insurer or Eligible Guarantor, as applicable;
- (b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, Eligible Insurer or Eligible Guarantor, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified herein.

Section 3. Additional Rights and Eligible Mortgages. To the extent permitted by applicable law, Eligible Mortgagees shall also be afforded the following rights:

- (a) Any restoration or repair of the Property, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless other action is approved by Eligible Mortgagees of Lots to which at least fifty-one percent (51%) of the votes in the Association have been allocated;
- (b) No reallocation resulting from a partial condemnation or partial destruction of the Property may be effected without the prior approval of Eligible Mortgagees of the remaining Lots whether existing in whole or in part, to which have been allocated at least fifty-one percent (51%) of the votes in the Association of all remaining Lots subject to Mortgages held by Eligible Mortgagees;
- (c) No amendment of the Declaration, Bylaws or Certificate of Formation which authorizes the alteration or destruction of one or more Lots or Common Areas may be effected without the consent of the Mortgagees of the Owners of such Lots or Common Areas:

Section 4. Mortgage Priority. Notwithstanding any language contained in this Declaration to the contrary, no Owner or other party shall have priority over any rights of the Mortgagee of any Lot pursuant to its Mortgage in the case of a distribution to the Owner of such Lot of insurance proceeds or condemnation awards for losses to or taking of all or a portion of such Lot and/or Common Areas. Institutional lenders shall have the right to examine the books

and records of the Association at all reasonable times during regular business hours of the Association.

Section 5. Compliance With FHLMC and FNMA Regulations. The Declarant intends that the Property shall comply with all requirements of the FHLMC and the FNMA pertaining to the purchase by FHLMC and FNMA of conventional home loans. Declarant and all Owners therefore agree that, notwithstanding anything to the contrary contained herein, in the event the Property or the Declaration or Bylaws do not comply with the FHLMC and FNMA requirements, if permitted under applicable law, the Board shall have the power (on behalf of the Association and each and every Owner) to amend the terms of this Declaration and the Bylaws and to enter into any agreement with FHLMC and FNMA (or their designees) or the Mortgagees of the Lots reasonably required by FHLMC and FNMA or the Mortgagees to allow the Property to comply with such requirements.

## **ARTICLE X**

### **GENERAL PROVISIONS**

Section 1. Duration. This Declaration and the covenants, restrictions, charges, and liens set out herein shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Declarant and every Owner of any part of the Property, and their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years beginning on the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless terminated by a vote of approval by sixty-six and two-thirds percent (66 and 2/3%) of the total votes of each class of the membership of the Association as set forth herein, with each class voting separately. Any such changes shall be effective when an instrument is filed for record in the Official Public Records of Johnson County, Texas, with the signatures of the requisite number of Owners of the Property.

Section 2. Amendment.

- (a) By Declarant. This Declaration or any Supplemental Declaration may be amended by the Declarant acting alone until December 31, 2023 or until Declarant no longer holds a majority of the votes in the Association, whichever occurs last. No amendment by Declarant after December 31, 2023, shall be effective until there has been recorded in the Official Public Records of Johnson County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Association certifying that the Declarant had the requisite number of votes. Notwithstanding the foregoing, Declarant may amend this Declaration at any time (i) to correct typographical and grammatical errors, and (ii) in order to comply with VA or FHA requirements for approval of the Property.
- (b) By Owners. In addition to the method in Article X Section 2(a), after the end of the Declarant's right to amend the Declaration, this Declaration may be amended by the recording in the Official Public Records of Johnson County, Texas, of an

instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by the Owners entitled to cast at least sixty-six and two-thirds (66 2/3%) of the number of votes entitled to be cast pursuant hereto.

Section 3. Enforcement. Each Owner of any part of the Property, the Association, and Declarant shall have the right (but not the duty) to enforce any of the covenants and restrictions set out in this Declaration, as same may be amended as herein provided. Enforcement of the covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Property or any part thereof, to enforce any lien created by these covenants; and failure by Declarant, the Association or any Owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. In any enforcement action, including litigation, undertaken by the Association and/or Declarant, the Association and/or Declarant shall be entitled to recover its reasonable attorney's fees and related costs of enforcement (including court costs) from the party against whom such enforcement action was brought.

Section 4. Consent to Modification of Plat. Declarant hereby reserves unto itself the exclusive right and power at any time and from time to time to modify, change, resubdivide or amend, in any lawful manner, the subdivision plat of the Property without the necessity of obtaining the written consent of any Owner of any part of the Property prior to such modification, change, resubdivision or amendment; provided, however, that no such modification, change or amendment shall alter the flood plain, easements, utility commitments or streets within, to, or abutting any Lot, or otherwise encumber such Lot, without the written consent of the Owner of such Lot. In that regard, each Owner of any part of the Property hereby consents to the foregoing reservation and hereby waives any and all right to consent to any modification, change or amendment of the subdivision plat by Declarant.

Section 5. Successor Declarant. Declarant may at any time, or from time to time, sell, assign or transfer all or any part of its rights hereunder and/or its right, title and interest in the Property to any person or entity, and such assignee shall thereafter have such rights and powers of Declarant as are so transferred or assigned. In the event Declarant shall convey all of its rights hereunder, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such assignee shall be obligated to perform all such duties and obligations of Declarant effective when an instrument effecting such assignment is filed for record in the Official Public Records of Johnson County, Texas.

Section 6. Easements.

- (a) Reserved Easements. All dedications, limitations, restrictions and reservations shown on the recorded subdivision plat of the Property, and all grants and dedications of easements, rights-of way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in

each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes and additions to the easements and rights-of way for the purpose of efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone, cable television, and drainage) in favor of any person or entity, along and on either or both sides of any Lot line, which easement shall have a maximum width of 7.5 feet on each side of such Lot line.

- (b) Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, gas, water, electricity, telephone, cable television, drainage and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any improvement constructed on the Lots. Notwithstanding any provision contained in this Section, no utility lines or appurtenances thereto may be relocated on the Property until approved by the Architectural Control Committee.
- (c) Drainage Easement. Each Owner covenants to provide easements for drainage and water flow as contours and the arrangement of improvements constructed on the Lots require. There shall be no construction of improvements, temporary or permanent, in any drainage easement, except as provided in writing by the Architectural Control Committee and the City of Midlothian.
- (d) Surface Areas. The surface of easement areas for underground utility services may, with the written permission of the City of Midlothian, be used for the planting of shrubbery, trees, lawns or □flowers. However, neither Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants, or assigns, to any of the above mentioned vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in such easement area.

Section 7. Construction and Sale. Notwithstanding any provisions contained in the Declaration to the contrary, so long as the initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Property such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the sale of such Lots, including, but not limited to, construction offices, business

offices, signs, and sales offices, and the Declarant shall have an easement for access to such facilities, such use to be limited, however, to Lots owned by Declarant. This Section may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Section 7 shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon the Declarant's recording a written statement that all sales activity has ceased.

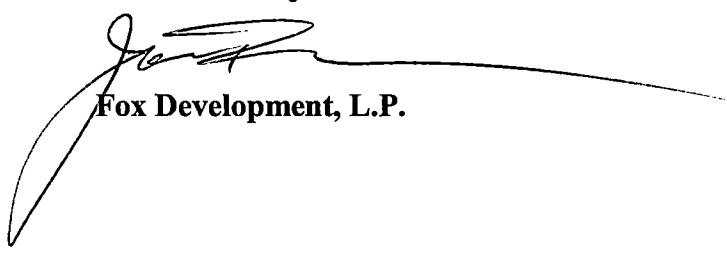
Section 8. Indemnification. The Association shall indemnify every officer and director against any and all expense, including attorneys' fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, 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 by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null, or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereto. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null, or void.

Section 10. Titles. The titles, headings, and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 11. Notwithstanding anything herein to the contrary, Declarant reserves the right to transfer, assign, mortgage, or pledge any and all of the respective privileges, rights, title, and interest hereunder, or in the Property or any part thereof, by means of recording an assignment of such in the Official Public Records of Ellis County, Texas. Upon such assignment, Declarant shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from or after the recording of such assignment. No successor assignee of the rights of Declarant shall have or incur any liability for the obligations or acts of any predecessor in interest.

EXECUTED this 1 of February, 2017.

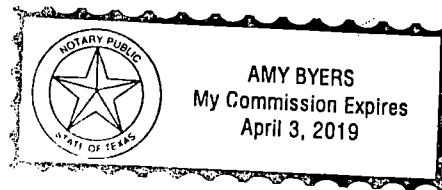
  
Fox Development, L.P.

STATE OF TEXAS

COUNTY OF ELLIS

This instrument was acknowledged before me on this 1 day of Feb., 17 2016, by Fox Development, L.P.

  
Notary Public, State of Texas





**JOINDER BY MORTGAGEE**

The undersigned, being the sole Mortgagee and holding a Mortgage against the Property, joins in the execution of this Master Declaration for the purpose of subordinating the following liens and security interests of said Mortgagee (including, without limitation, those more fully set forth below) to the Master Declaration:

Promissory Note in the principal sum of \_\_\_\_\_  
(\$ \_\_\_\_\_), said note payable to and secured by a vendor's lien retained in Deed of record as Document No. \_\_\_\_\_ in the Official Public Records of Ellis County, Texas and additionally secured by a Deed of Trust of record as Document No. \_\_\_\_\_ in favor of \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_, Trustee.

The undersigned joins herein for the sole purpose of subordinating the liens described above to the Master Declaration and makes no representation or warranty, expressed or implied, of any nature whatsoever, to any present or future Owner or purchaser of a Lot with respect to such Lot or the Property. All such Owners or purchasers agree by their purchase of a Lot that no such representation or warranty has been made by the undersigned and that they have not relied upon the undersigned in any way in making their decision to acquire a Lot.

[INSERT NAME OF LENDER IF APPLICABLE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS

COUNTY OF ELLIS

This Master Declaration of Covenants, Conditions and Restrictions was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_ (name), \_\_\_\_\_ (title) of \_\_\_\_\_ on behalf of said bank for the purposes and consideration therein expressed.

\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING, RETURN TO:**

*Payne Concrete  
P.O. Box 1097  
Middleman, TX. 76065*

FILED FOR RECORD - ELLIS COUNTY, TX  
INST NO. 1702931  
on Feb 01, 2017 at 01:10:00 PM

Any provision herein which restricts the sale, rental, or use of this described real property because of color or race is invalid and unenforceable under federal law.  
STATE OF TEXAS, COUNTY OF ELLIS  
I hereby certify this instrument was filed on the date and time stamped herein and was duly recorded in the volume and page of the OFFICIAL PUBLIC RECORDS of Ellis County Texas and stamped hereon



*Cindy Palley*  
COUNTY CLERK ELLIS COUNTY, TEXAS

Refiling to correct Joinder by mortgagee

122  
25 (1)

FILED FOR RECORD - ELLIS COUNTY, TEXAS  
INST NO. 1706412 FILING DATE/TIME: Mar 09, 2017 at 03:10:00 PM

**MASTER DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
SKYVIEW ADDITION**

This Master Declaration of Covenants, Conditions and Restrictions is made by Fox Development, L.P., a Texas limited partnership, hereinafter referred to as "**Declarant**".

WITNESSETH:

WHEREAS, Declarant is the owner and developer of Skyview Addition in Midlothian, Ellis County, Texas, according to the Plat recorded in Cabinet D, Slides 340 (Document No. 661527), Plat Records, Ellis County, Texas (the "**Property**" or the "**Subdivision**"); and

WHEREAS, Declarant desires to convey the Property subject to certain protective covenants and conditions, restrictions, liens and charges hereinafter set forth; and

WHEREAS, the Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property, Declarant hereby adopts and establishes the following declaration of reservations, restrictions, covenants, conditions and easements to apply uniformly to the use, improvement, occupancy, and conveyance of all the Property.

**NOW, THEREFORE**, Declarant hereby declares that all of the Property described above shall be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**  
**DEFINITIONS**

Section 1. "Association" shall mean and refer to the SKYVIEW ADDITION PROPERTY OWNERS ASSOCIATION, INC., a nonprofit corporation organized pursuant to the Texas Nonprofit Corporation Act, and its successors and assigns.

Section 2. "Board of Directors" or "Board" shall mean the elected and governing body of the Association.

Section 3. "Homebuilder" shall mean Value Builders, Inc. and any other homebuilder designated as such by Declarant.

Section 4. "Lot" shall mean a Lot with a completed duplex 2-family residence constructed thereon.

~~FILED FOR RECORD - ELLIS COUNTY, TEXAS  
INST NO. 1702931 FILING DATE/TIME: Feb 01, 2017 at 01:10:00 PM~~

Section 5. "Maintenance Areas" shall mean all property now or hereafter maintained by the Association including, without limitation, the "Common Areas" shown on the subdivision plat, if any, and any parks, drainage easement areas, streets, right-of-way, medians, entry strips, signs and lighting systems on or adjacent to the Property, and, as appropriate and landscaping on Lots.

Section 6. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 7. "Mortgage" shall mean a lien interest in a Lot given to a creditor as security for repayment of a loan made to the Owner.

Section 8. "Mortgagee" shall mean a beneficiary of a Mortgage.

Section 9. "Mortgagor" shall mean the trustor of a Mortgage.

Section 10. "Owner" shall mean and refer to one or more persons or entities who own the record title to any Lot which is a part of the Property, but excluding in all cases any party holding an interest merely as a security for the performance of an obligation.

Section 11. "Person" means a natural person, corporation, partnership, trustee, or other legal entity.

Section 12. "Property" shall mean and refer to the above-described real property in the City of Midlothian, Ellis County, Texas, and shall further refer to such additional property as may hereafter be annexed by Subsequent Amendment to this Declaration or which is owned by the Association.

Section 13. "Restrictions" shall mean, collectively, this Declaration, together with any and all Supplemental Declarations, as the same may be amended from time to time, the Association's Certificate of Formation and Bylaws and the Rules and Regulations described in Article IV, Section 1, from time to time in effect, as the same may be amended from time to time.

Section 14. "Subsequent Amendment" shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the property submitted by that Amendment to the provisions of this Declaration.

Section 15. "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions or restrictions which may be recorded hereafter in order to subject any portion of the Property to further covenants, conditions or restrictions.

## ARTICLE II

## THE ASSOCIATION

Section 1. Organization. Declarant shall, at such times as Declarant deems appropriate, cause the formation and incorporation of the Association. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Certificate of Formation and Bylaws or in this Declaration.

Section 2. Membership. Every Owner shall be deemed to have a membership in the Association, and shall remain a member thereof until the Owner's ownership ceases for any reason, at which time the Owner's membership in the Association shall automatically cease. Each Owner's membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of the Lot and may not be separated from such ownership. Whenever the legal ownership of a Lot passes from one person to another, by whatever means, it shall not be necessary in any instrument to provide for transfer of membership in the Association, and no certificate of membership will be issued.

Section 3. Voting. The Association shall have two classes of membership, Class "A" and Class "B", as follows:

- (a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Members, if any. Class "A" Members shall be entitled to one (1) vote in the Association for each Lot it owns in the Property. When more than one person holds an interest or interests in the Property, all such persons shall be Members, and the votes for such portion of the Property shall be exercised as they among themselves determine.
  
- (b) Class "B". The Class "B" Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class "B" Members shall be entitled to three (3) votes in the Association for each Lot it owns in the Property. The Class "B" membership shall cease and become converted to Class "A" membership on the happening of the earlier of the following events:
  - (1) Ten (10) years after the date of the first conveyance of a Lot to a person other than Declarant;
  - (2) Upon the conveyance of all the Lots with residences constructed upon them;
  - (3) When Declarant, in its sole discretion, so chooses.

Thereafter, the Class "B" Members shall be deemed to be Class "A" Members entitled to the vote(s) set out above. At such time, the Declarant shall call a

meeting, as provided in the Bylaws of the Association for special meetings to advise the membership of the termination of Class "B" status.

### **ARTICLE III** **MAINTENANCE**

Section 1. Association's Responsibility. The Association, in the sole discretion of its Board, may maintain and keep in good repair the Maintenance Areas in the Property, the right-of-way, medians, entry strips, signs and lighting systems whether owned by the Association, by an Owner, or by the public, so long as the rights-of-way or entry strips are within or adjacent to the Property. The Association shall maintain, repair, and replace the Common Areas, if any, in the Property. To enhance the appearance of the subdivision and the Lots, the Association shall also be responsible for maintaining the front and side yards in front of any privacy fencing, including mowing, pruning trees and shrubs and maintaining plants in existing and defined beds. The cost of the maintenance provided for in this Section 1 shall be a common expense of the Association.

Section 2. Owner's Responsibility. Owners and occupants (including lessees) of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to maintain the back yards, including mowing, pruning trees and shrubs and maintaining plants in existing and defined beds, and shall keep that Lot safe and clean at all times. All improvements upon any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof. Such maintenance includes, but is not limited to, the following:

- (a) Prompt and regular removal of all litter, trash, refuse, debris, and wastes, including any such items resulting from storm, flood or other casualty.
- (b) Regular watering of all lawn, trees, shrubs and plants as necessary to keep them alive and healthy.
- (c) Keeping parking areas and driveways in good repair.
- (d) Complying with all applicable governmental laws, ordinances, rules and regulations.

Section 3. Enforcement. If, in the opinion of the Board of Directors, any Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Board may give such Owner or occupant written notice of such failure and such Owner or occupant must within ten (10) days after receiving such notice perform the care and maintenance required. Should any Owner or occupant fail to fulfill this duty and responsibility within such period, then the Board, through its authorized agent or agents, shall have the right and power to enter into such Owner's Lot and perform such care and maintenance without liability for damages for wrongful entry, trespass or otherwise to any person. The Association may levy a special assessment pursuant to Article V of this Declaration for the cost of such work which shall be the joint and personal

obligation of the Owners and occupants (including lessees) of the Lot in which such work is performed and shall be enforced as provided in Article VI of this Declaration.

**ARTICLE IV**  
**POWERS AND AUTHORITY OF THE ASSOCIATION**

Section 1. Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration. The Board, acting on behalf of the Association, shall have the power and authority necessary or appropriate to manage the property, business and affairs of the Association and to exercise all rights, duties and privileges granted to the Association by law or this Declaration including, without limitation, the powers described below:

- (a) Rules and Regulations. The Association, through its Board, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration, but may serve to clarify or enhance the protections and purposes of the Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances.
- (b) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.
- (c) Records. To keep books and records of the Association's affairs.
- (d) Assessments. To levy assessments as provided in Article VI.
- (e) Right of Entry and Enforcement. To enter at any time in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and upon the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may

deem necessary or expedient to enforce the Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.

- (f) Fines for Violation of the Restrictions. To levy fines, not to exceed \$200.00 per violation per day, against a Member who violated one or more of the Restrictions. The Board shall adopt a schedule of fines, procedures for notices of violations, implementation of fines and appeal to the Board of any fine levied against a Member. The procedure shall be consistent with the provisions of Texas Property Code Chapter 209 as the same may be amended from time to time. Failure of a Member to pay fines may result in the suspension of a Member's rights to use the Association amenity areas or such other reasonable sanctions as may be allowed by law. Delinquent fines shall be deemed personal obligations of a Member and shall be deemed an Assessment subject to the Assessment Lien and Foreclosure provisions of Paragraph 7.7. Proceeds derived from fines shall be used by the Association as directed by the Board of Directors.
- (g) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (h) Manager. To retain and pay for the services of a person or firm (the "**Manager**") to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The Members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.
- (j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, the Certificate of Formation or Bylaws of the Association.
- (k) Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to provide any service or perform any function on behalf of Declarant, the Association or any Person.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interest within the Property conveyed to it by the Declarant.



Section 3. Association Documents. The Association shall make available for inspection free of charge during business hours and under normal circumstance current copies of the Declaration, Certificate of Formation, Bylaws, Rules and Regulations, books, records and financial statements of the Association to Owners and Mortgagees. Copies of such documents may be requested and obtained in the manner provided by any document policy adopted by the Board of Directors, including the right of the Association to charge reasonable fees for such documents in the manner provided by law. Any holder, insurer or guarantor of a first Mortgage shall be entitled, without charge, upon written request, to an audited financial statement for the immediately preceding fiscal year within a reasonable time following such request.

## **ARTICLE V** **INSURANCE**

Section 1. Association Insurance Requirements. The Association shall obtain and retain directors and officers liability insurance of not less than \$1,000,000.00 per occurrence. In addition, the Association shall require certificates of insurance from all contractors who perform maintenance and repair services for the Association on Maintenance Areas and Improved Lots.

## **ARTICLE VI** **ASSESSMENTS**

Section 1. Maintenance Fund. The Board of Directors shall establish a fund (the "**Maintenance Fund**") into which shall be deposited all monies paid to the Association and from which disbursement shall be made in performing the functions of the Association under the Declaration, the Bylaws, or the Certificate of Formation.

Section 2. Initial Assessment. At Closing on the purchase of a Lot from the Declarant/Developer and at each subsequent Closing, the Buyer shall pay an initial assessment of \$300.00, which shall be deposited into the Maintenance Fund.

Section 3. Regular Annual Assessments. There are hereby created assessments for common expenses as may be from time to time specifically authorized by the Board of Directors. Regular annual assessments shall be for expenses determined by the Board of Directors to be for the benefit of the Association as a whole. Each Owner, by acceptance of a deed or recorded contract of sale, is deemed to covenant and agree to pay these assessments. All such assessments, together with interest at the rate of twelve percent (12%) per annum, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose, and the Owner's grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed, except no first Mortgagee that obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors.

Section 4. Computation of Assessment. The regular annual assessment for calendar years 2017 and 2018 shall be \$600 per Lot, to be prorated for the remainder of the year in which it is purchased from a Homebuilder. For years 2019 and thereafter, it shall be the duty of the Board of Directors, to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause a copy of the budget, and the amount of the regular annual assessment to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to a meeting of members to discuss the budget. The budget and the assessment shall become effective unless disapproved at the meeting by a vote of at least a majority of both classes of the total Association membership. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board of Directors fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 5. Special Assessments. If the Board, at any time, or from time to time, determines that the regular annual assessment assessed for any period is insufficient to provide for the continued operation of the Maintenance Areas, timely payment of its bills, and the maintenance, repair or replacement of the Maintenance Areas for which the Association is responsible, then the Board shall have the authority to levy such special assessments as it shall deem necessary to provide for such continued maintenance, repair or replacement and operation. Without limiting the generality of the foregoing, such special assessment may be assessed because of casualty, condemnation, or other loss to any part of the Maintenance Areas for which the Association is responsible, or to make up for any deficiencies caused by nonpayment of assessments by Owners. All special assessments shall be payable (and the payment hereof may be enforced) in the manner herein specified for the payment of regular annual assessments. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Lot into compliance with the provision of the Declaration, the amendments thereto, the Bylaws, the Certificate of Formation, and the Association Rules and Regulations, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing.

Section 6. Assessment Property. The only portions of the Property which shall be subject to the assessments provided for in this Declaration shall be a Lot sold by a Homebuilder.

Section 7. Division of Assessments Among Owners. Assessments made by the Association under Section 2 and uniform special assessments described in Section 4 shall be equal and uniform. The pro rata percentage of each assessment shall be calculated by dividing the number one by the total number of Lots at the time the assessment is levied.

Section 8. Late Charges. If any assessment made pursuant to this Article is not paid within thirty (30) days after it is due, the Owner shall pay a late fee of \$25 for each thirty (30) days the assessment remains delinquent; provided, however, such charge shall never exceed the maximum charge permitted under applicable law. In the event of default in the payment of any such assessment, the Owner of the Lot shall be obligated to pay interest on the amount of the assessment from the due date at a percentage rate of twelve percent (12%) per annum, unless

otherwise established by Board resolution, together with all costs and expenses of collection, including reasonable attorney's fees.

Section 9. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article or any other Article in this Declaration but unpaid, together with interest and the cost of collection, including attorney's fees as provided in Section 7 shall thereupon become a continuing lien and charge on the Lot covered by such assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for:

- (a) All liens for taxes or special assessments levied by the applicable city, county or state government, or any political subdivision or special district thereof;
- (b) All liens securing all amounts due or to become due under any mortgage vendor's lien or deed of trust filed for record prior to the date any assessment became due and payable; and
- (c) All liens including, but not limited to, vendor's liens, deeds of trust and other security agreements which secure any loan made by any lender to a Member for any part of the purchase price of any Lot when the same are purchased from a builder, or for any part of the cost of constructing, repairing, adding to or remodeling any Improvements utilized for residential purposes.

The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination may be signed by an officer of the Association. To evidence the aforesaid assessment lien, the Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of the county in which the Lot is located. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by either (i) the Association foreclosing against the defaulting Owner's Lot in like manner as a mortgage on real property subsequent to the recording of a notice of assessment lien as provided above, or (ii) the Association instituting suit against the Owner personally obligated to pay the assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to such Mortgagee any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.

After notice and hearing, the Board may temporarily suspend the voting rights of a Member who is in default of payment of any assessment.

Section 10. Mortgage Protection. Notwithstanding any other provision of this Declaration, no lien created under this Article or under any other Article of this Declaration, nor any lien arising by reason of any breach of the rules and regulations, nor the enforcement of any provision of this Declaration or of any Subsequent Amendment shall defeat or render invalid the rights of the beneficiary under any recorded Mortgage of first and senior priority now or hereafter given upon any portion of the Property made in good faith and for value. However, after a conveyance in lieu of foreclosure, such property shall remain subject to this Declaration, and the Owner thereof shall thereafter be liable for all assessments levied after such completion of foreclosure or conveyance in lieu of foreclosure. No amendment of this Section 9 shall affect the rights of any Mortgagee whose Mortgage has the first and senior priority as provided herein, unless the Mortgagee consents in writing to the amendment thereof, or unless the amendment was filed of record prior to the recording of the Mortgage, provided, however, that after foreclosure, or conveyance in lieu of foreclosure, the portion of the Property which was subject to such Mortgage shall be subject to such amendment.

Section 11. Subordination. The lien assessments provided for herein shall be subordinated to any loan used by Declarant for the acquisition, development and construction of the lots and homes within the Property, and the lien of any first Mortgage if the Mortgage was recorded before the delinquent assessment became due. However, the sale or transfer of any portion of the Property subject to assessment pursuant to Mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such property subject to assessment from liability for any assessment thereafter becoming due or from the lien therefore.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Designation of Committee. An Architectural Control Committee (the "Committee"), shall consist of not less than three (3) members who shall be natural persons. The initial Committee shall consist of Peter Thomas, Glen Anderson and Douglas Stewart. Persons serving on the Committee shall serve until removed by the Board of Directors or until a resignation is effective. Any member may resign at any time for any reason and such resignation shall be effective upon notice thereof to the Board. Subsequent members of the Committee shall be appointed by the Board of Directors. Until the occurrence of one of the events described in Article II, Section 3(b), whichever is earlier, the appointment of the members of the Committee must be approved by Declarant, and during such period any and all members of the Committee can be removed by Declarant with or without cause. The Board shall have the exclusive right and power at any time and from time to time to fill vacancies on the Committee. The Committee shall act by majority vote of its members.

Section 2. Function of Architectural Control Committee. No improvement, as that term is hereinafter defined, except those constructed by the Declarant, shall be erected,

constructed, placed, altered (by addition or deletion), maintained or permitted to remain on any portion of the Property until plans and specifications, and any other information pertaining thereto, in such form and detail as the Committee may deem necessary, shall have been submitted to and approved in writing by the Committee. The decision of the Committee shall be final, conclusive, and binding upon the applicant.

Section 3. Content of Plans and Specifications. The plans and specifications to be so submitted and approved shall include the following:

- (a) A site plan showing the location of all improvements, structures, walks, driveways, fences, and Lot corners and the corners of proposed improvements, and a grading plan and a drainage plan. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the Lot contours is contemplated.
- (b) Exterior elevations showing all sides of the proposed improvements.
- (c) Exterior materials, colors, textures and shapes.
- (d) Structural design and construction plans.
- (e) Landscaping plan, including walkways, fences and walls, elevation changes, sprinkler systems, vegetation and ground cover.
- (f) Parking area and driveway plan.
- (g) Any exterior illumination, including location and method.
- (h) Any fire protection systems required by applicable government law, ordinance or regulation.
- (i) Signs, including size, shape, color, location and materials.
- (j) Mailboxes, if any.

Section 4. Definition of "Improvement". The term "improvement" shall mean and include all buildings and roofed structures, fences, walls, mass plantings, driveways, signs; any new exterior construction or exterior improvement; all outbuildings; and both original improvements and all later changes and improvements. The term "improvement" shall not include garden shrub or tree replacements or any other replacement or repair of any magnitude which does not change exterior colors or exterior appearances. Further, the term "improvement" shall not include repairs and/or replacements of improvements damaged by fire or other casualty, subject to the following:

- (a) The damaged improvements to be repaired or replaced were approved by the Committee as provided in Section 2.

- (b) The repairs or replacements will effect a restoration of the damaged improvements to substantially the same condition as existed prior to such damage, with no material change from the original plans and specifications approved by the Committee as provided in Section 2.
- (c) Plans and specifications for the repairs or replacements, similar in form and detail to the original plans and specifications for the items to be repaired or replaced, together with a certificate signed by a duly licensed architect stating that the repairs or replacements will effect a restoration of the damaged improvements to substantially the same condition as existed prior to such damage with no material change from such original plans and specifications, shall have been submitted to the Committee at least fifteen (15) days prior to the date construction of such repairs or replacements is commenced.

Section 5. Variances. In case of special size or shape of site or condition of terrain or special use, operation or treatment not provided for within the general conditions of the protective covenants herein contained or for any other reason, the Committee may, in its discretion, permit such variances or exceptions to the restrictions herein contained as it deems necessary or desirable.

Section 6. Failure of the Committee to Act. The Committee shall approve such plans and specifications or reject them as being inadequate within thirty (30) days after receipt thereof. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Committee may reject them as being inadequate or may approve part, conditionally or unconditionally, and reject the balance. If the committee shall fail to respond to any Owner within thirty (30) days after its receipt of any original or revised plans and specifications submitted hereunder, such plans and specifications shall be deemed to have been disapproved by the Committee.

Section 7. Limitation of Liability Neither Declarant, the committee, nor any of the members of the Committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any owner of land affected by this Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications.

Section 8. Inspection of Work.

- (a) Completed Work. Inspection of completed work and correction of defects therein shall proceed as follows:
  - (1) Upon the completion of any improvement for which the final plans and specifications were approved under this Declaration, the Owner shall give written notice of completion to the Committee.

- (2) Within such reasonable time as the Committee may set in its rules but not to exceed fifteen (15) days thereafter, the Committee or its duly authorized representative may inspect such improvement. If the Committee finds that such work was not done in strict compliance with all approved plans and specifications, it shall notify the Owner in writing of such noncompliance within five (5) days, specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same.
- (3) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Committee shall notify the Board of Directors in writing of such failure. Upon notice to the Owner, the Board shall conduct a hearing at which it shall determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days following the announcement of the Board ruling. If the Owner does not comply with the Board's ruling within such period, the Board, at its option, may either remove the non-complying improvement, remedy the noncompliance or seek appropriate injunctive relief and other available legal redress from a court of competent jurisdiction, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an assessment against such Owner and improvement in question and the Lot upon which the same is situated for reimbursement and the same shall constitute a personal obligation of the Owner of such Lot, a lien upon such Lot and improvement, and be enforced as provided in this Declaration.
- (4) If for any reason after receipt of said written notice of completion from the Owner, no inspection is made or any noncompliance is not found within the period provided above in Subparagraph (2) of this Section 8(a), the improvement shall be deemed to be in accordance with said approved plans and specifications. In the instances where an inspection has occurred and the improvements are in compliance, upon request, the Committee shall issue a "Certificate of Compliance" in a form suitable for recording. The certificate shall identify the Lot and the improvement, and shall certify only that the improvements thereon are not in violation of the covenants of the Declaration, or if they are in violation, that a variance has been granted. THE CERTIFICATE SHALL NOT BE CONSTRUED TO CERTIFY THE ACCEPTABILITY, SUFFICIENCY OR APPROVAL BY THE ARCHITECTURAL CONTROL COMMITTEE OF THE ACTUAL DESIGN OR CONSTRUCTION OF THE IMPROVEMENTS OR OF THE WORKMANSHIP OR MATERIALS THEREOF. THE OWNER IS HEREBY NOTIFIED THAT THE CERTIFICATE IN NO WAY WARRANTS THE SUFFICIENCY, ACCEPTABILITY OR

APPROVAL BY THE ARCHITECTURAL CONTROL COMMITTEE OF THE DESIGN, CONSTRUCTION, WORKMANSHIP, MATERIALS OR EQUIPMENT OF THE IMPROVEMENTS. RECORDATION OF SUCH A CERTIFICATE SHALL BE AT THE EXPENSE OF THE OWNER OF THE IMPROVED LOT.

- (b) Work in Progress. The committee may inspect all work in progress give notice of noncompliance as provided above in Subparagraph (2) of this Section. If the Owner denies that such noncompliance exists, the procedures set out in Subparagraph (3) of this Section shall be followed, except that no work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Board should ultimately find that noncompliance exists.

Section 9. Enforcement. Declarant or the Board of Directors, on behalf of the Association, shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction the decisions of the Committee established in this Article. This Article may not be amended without Declarant's written consent, so long as Declarant owns any land subject to this Declaration.

## **ARTICLE VIII**

### **USE RESTRICTIONS AND PROTECTIVE COVENANTS**

#### Section 1. General Restrictions.

- (a) Noxious Uses. The land and improvements located on each Lot shall not be used so as to disturb the neighborhood or occupants of adjoining property, or to constitute a nuisance or violate any public law, ordinance or regulation from time to time applicable thereto. Nor shall such land and improvements be used for any purposes which will create or emit any objectionable, offensive or noxious odors, dust, gas, fumes or other such material.
- (b) Animals. No animals or birds, other than a maximum of four (4) generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be visible from neighboring property, without approval by the Architectural Control Committee. Upon the written request of any Owner, the Board of Directors of the Association shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal or bird is a generally recognized house or yard pet, or a nuisance. Upon the Board's sole determination that a particular animal is not allowed in the subdivision, as it is in violation of one or more provisions of these Restrictions, the Board may order the removal of the animal from the subdivision and the Owner shall thereafter



permanently remove the animal from the subdivision within ten(10) days of the Owner's receipt of the Board's order of removal.

- (c) Antennas. Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed on any Lot in a location which is not visible from any street, unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a location visible from the street as approved by the Architectural Review Committee. The ARC may require as much screening as possible while not substantially interfering with reception. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Properties. No satellite dishes shall be permitted which are larger than 1 meter in diameter. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted placed, allowed, or maintained upon any portion of the Property which transmit, rather than receive, television, radio, satellite or other signals. The Declarant by promulgating this section is not attempting to violate the Telecommunications Act of 1996 (the "Act"), as may be amended from time to time. This section shall be interpreted to be as restrictive as possible while not violating the Act.
- (d) Temporary Occupancy. No trailer, basement or any incomplete building, tent, shack, garage or barn and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction, repair or remodeling of a dwelling on any Lot shall be moved immediately after the completion of construction.
- (e) Trailers, Boats and Motor Vehicles. Without prior approval of the Architectural Control Committee, no mobile home, trailer of any kind, truck, camper, motorized recreational vehicle, permanent tent or similar structure, boat or inoperable motor vehicle of any type shall be kept, placed, maintained, constructed, reconstructed or repaired upon any property or street or private driveway in such a manner as will be visible from neighboring property, private drive, or a public street; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvements approved by the Architectural Control Committee. In addition, no motor vehicle of any type, whether operable or inoperable, may be constructed, reconstructed or repaired upon any property or street or private driveway in such a manner as will be visible from neighboring property for three (3) consecutive days.
- (f) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise

therefrom, so as to render any such property or portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property.

- (g) Repair of Buildings. No building or structure upon any property within any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.
- (h) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Association, which may include the requirement that all containers will be disposable. In no event shall such containers be maintained so as to be visible from neighboring property except to make the same available for collection and, then, only the shortest time reasonably necessary to effect such collection.
- (i) Clothes Drying Facilities. Outside clotheslines or other facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed or maintained exclusively within a fenced yard or otherwise concealed and not visible from neighboring property.
- (j) Sidewalk Encroachments. No tree, shrub or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any sidewalk or other pedestrian way from ground level to a height of seven feet (7') without the prior approval of the Architectural Control Committee.
- (k) Right of Access. During reasonable hours Declarant, any member of the Architectural Control Committee, or member of the Board of Directors or any other representative of any of them, shall have the right to enter upon and inspect any Lot for the purpose of ascertaining whether or not the provisions of these restrictions have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.
- (l) Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.
- (m) Machinery and Equipment. Without approval by the Board, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in Johnson County, Texas, in connection with the use, maintenance or construction of residential improvements; provided, however, such machinery or equipment may be so placed, operated or maintained by any governmental, or quasi-

governmental agency or a public utility. Nothing herein shall prevent the use of appliances, tools or machines for usual and customary household purposes.

- (n) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which will induce, breed or harbor plant diseases or noxious insects.
- (o) Restriction on Further Subdivision. Except as expressly provided for herein for the benefit of Declarant, no Lot shall be further subdivided and no portion less than all of any such Lot nor any easement or other interest therein, shall be conveyed by any Owner, except, however, that easements may be granted to any governmental or quasi-governmental agency or a public utility.
- (p) Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the Property or the subdivision or carried by any person or by any other means displayed within the Property or the subdivision except the following:
  - (1) For Sale Signs. An Owner may erect one (1) sign not exceeding 2 feet by 3 feet in area, fastened only to a stake in the ground and extending not more than 3 feet above the surface of the ground advertising the property for sale or for lease.
  - (2) Declarant/Builder Signs. Signs or billboards may be erected by the Declarant or any Homebuilder as Declarant shall desire and approve.
  - (3) Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 90 days in advance of the election to which they pertain and are removed within 15 days after the election.
  - (4) School and Business Signs. Emblems or bumper stickers advertising a resident's school or business mounted upon vehicles parked or driven in the subdivision.

Declarant or its agents will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing requirements; and in so doing, will not be subject to any liability in connection with such removal.

- (q) Tanks. No elevated tanks shall be erected.
- (r) Increased Insurance Costs. Nothing shall be done on any Lot which will result in the increase of fire and extended coverage insurance premiums thereon or the cancellation of such insurance.

- (s) Waste. No waste shall be committed on any Lot.
- (t) Lighting. No lighting or illumination shall be placed upon any Lot in such a manner as to cause unreasonable glare or illumination on any other Lot.
- (u) Rights of Declarant. Nothing herein shall be construed as prohibiting Declarant, its officers, employees or agents, from inviting any person or the general public to enter any residence situated upon any Lot owned by Declarant for the purpose of making a sale or lease thereof or from using such residence as a model for the purpose of making a sale or sales or from maintaining a sales force upon any Lot owned by Declarant which remains unsold.
- (v) Fencing. All fences shall be no greater than six feet (6') high. Fences shall be constructed of new wood and/or masonry material, wrought iron, or such other material approved by the Architectural Control Committee.

Section 2. Use Restrictions.

- (a) All Lots shall be used solely for single-family residential purposes.
- (b) No Lot or improvements thereon shall be leased or rented for less than thirty (30) days. Any lease or rental agreement must be in writing and must be subject to this Declaration, the Bylaws and the rules and regulations. Except for the foregoing, nothing in this Declaration shall prevent the rental of any Lot and improvements thereon by the Owner thereof for residential purposes.

Section 3. Building Restrictions. Each dwelling (2 dwellings per Lot) shall have a garage suitable for parking at least one (1) standard size automobile.

## **ARTICLE IX**

### **MORTGAGEE PROTECTION CLAUSES**

Section 1. Rights of Mortgagees. No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any lien provisions herein, shall render invalid the lien of any Mortgage on any Lot made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, unless otherwise provided herein.

Section 2. Notice to Mortgagees, Insurers and Guarantors. All Mortgagees including FNMA and FHLMC that have filed with the Association an appropriate written request which includes its name and address as well as the Lot encumbered by its Mortgage (the "Eligible Mortgagees") as well as all insurers of a Lot and governmental guarantors of a Mortgage that

have filed with the Association such a appropriate written request ("Eligible Insurers" and "Eligible Guarantors", respectively), shall be entitled to receive the following notices in writing from the Association:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee, Eligible Insurer or Eligible Guarantor, as applicable;
- (b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, Eligible Insurer or Eligible Guarantor, which remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified herein.

Section 3. Additional Rights and Eligible Mortgages. To the extent permitted by applicable law, Eligible Mortgagees shall also be afforded the following rights:

- (a) Any restoration or repair of the Property, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless other action is approved by Eligible Mortgagees of Lots to which at least fifty-one percent (51%) of the votes in the Association have been allocated;
- (b) No reallocation resulting from a partial condemnation or partial destruction of the Property may be effected without the prior approval of Eligible Mortgagees of the remaining Lots whether existing in whole or in part, to which have been allocated at least fifty-one percent (51%) of the votes in the Association of all remaining Lots subject to Mortgages held by Eligible Mortgagees;
- (c) No amendment of the Declaration, Bylaws or Certificate of Formation which authorizes the alteration or destruction of one or more Lots or Common Areas may be effected without the consent of the Mortgagees of the Owners of such Lots or Common Areas:

Section 4. Mortgage Priority. Notwithstanding any language contained in this Declaration to the contrary, no Owner or other party shall have priority over any rights of the Mortgagee of any Lot pursuant to its Mortgage in the case of a distribution to the Owner of such Lot of insurance proceeds or condemnation awards for losses to or taking of all or a portion of such Lot and/or Common Areas. Institutional lenders shall have the right to examine the books

and records of the Association at all reasonable times during regular business hours of the Association.

Section 5. Compliance With FHLMC and FNMA Regulations. The Declarant intends that the Property shall comply with all requirements of the FHLMC and the FNMA pertaining to the purchase by FHLMC and FNMA of conventional home loans. Declarant and all Owners therefore agree that, notwithstanding anything to the contrary contained herein, in the event the Property or the Declaration or Bylaws do not comply with the FHLMC and FNMA requirements, if permitted under applicable law, the Board shall have the power (on behalf of the Association and each and every Owner) to amend the terms of this Declaration and the Bylaws and to enter into any agreement with FHLMC and FNMA (or their designees) or the Mortgagees of the Lots reasonably required by FHLMC and FNMA or the Mortgagees to allow the Property to comply with such requirements.

## **ARTICLE X** **GENERAL PROVISIONS**

Section 1. Duration. This Declaration and the covenants, restrictions, charges, and liens set out herein shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Declarant and every Owner of any part of the Property, and their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years beginning on the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless terminated by a vote of approval by sixty-six and two-thirds percent (66 and 2/3%) of the total votes of each class of the membership of the Association as set forth herein, with each class voting separately. Any such changes shall be effective when an instrument is filed for record in the Official Public Records of Johnson County, Texas, with the signatures of the requisite number of Owners of the Property.

Section 2. Amendment.

- (a) By Declarant. This Declaration or any Supplemental Declaration may be amended by the Declarant acting alone until December 31, 2023 or until Declarant no longer holds a majority of the votes in the Association, whichever occurs last. No amendment by Declarant after December 31, 2023, shall be effective until there has been recorded in the Official Public Records of Johnson County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Association certifying that the Declarant had the requisite number of votes. Notwithstanding the foregoing, Declarant may amend this Declaration at any time (i) to correct typographical and grammatical errors, and (ii) in order to comply with VA or FHA requirements for approval of the Property.
- (b) By Owners. In addition to the method in Article X Section 2(a), after the end of the Declarant's right to amend the Declaration, this Declaration may be amended by the recording in the Official Public Records of Johnson County, Texas, of an

instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by the Owners entitled to cast at least sixty-six and two-thirds (66 2/3%) of the number of votes entitled to be cast pursuant hereto.

Section 3. Enforcement. Each Owner of any part of the Property, the Association, and Declarant shall have the right (but not the duty) to enforce any of the covenants and restrictions set out in this Declaration, as same may be amended as herein provided. Enforcement of the covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Property or any part thereof, to enforce any lien created by these covenants; and failure by Declarant, the Association or any Owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. In any enforcement action, including litigation, undertaken by the Association and/or Declarant, the Association and/or Declarant shall be entitled to recover its reasonable attorney's fees and related costs of enforcement (including court costs) from the party against whom such enforcement action was brought.

Section 4. Consent to Modification of Plat. Declarant hereby reserves unto itself the exclusive right and power at any time and from time to time to modify, change, resubdivide or amend, in any lawful manner, the subdivision plat of the Property without the necessity of obtaining the written consent of any Owner of any part of the Property prior to such modification, change, resubdivision or amendment; provided, however, that no such modification, change or amendment shall alter the flood plain, easements, utility commitments or streets within, to, or abutting any Lot, or otherwise encumber such Lot, without the written consent of the Owner of such Lot. In that regard, each Owner of any part of the Property hereby consents to the foregoing reservation and hereby waives any and all right to consent to any modification, change or amendment of the subdivision plat by Declarant.

Section 5. Successor Declarant. Declarant may at any time, or from time to time, sell, assign or transfer all or any part of its rights hereunder and/or its right, title and interest in the Property to any person or entity, and such assignee shall thereafter have such rights and powers of Declarant as are so transferred or assigned. In the event Declarant shall convey all of its rights hereunder, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such assignee shall be obligated to perform all such duties and obligations of Declarant effective when an instrument effecting such assignment is filed for record in the Official Public Records of Johnson County, Texas.

Section 6. Easements.

- (a) Reserved Easements. All dedications, limitations, restrictions and reservations shown on the recorded subdivision plat of the Property, and all grants and dedications of easements, rights-of way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in

each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes and additions to the easements and rights-of way for the purpose of efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone, cable television, and drainage) in favor of any person or entity, along and on either or both sides of any Lot line, which easement shall have a maximum width of 7.5 feet on each side of such Lot line.

- (b) Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, gas, water, electricity, telephone, cable television, drainage and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any improvement constructed on the Lots. Notwithstanding any provision contained in this Section, no utility lines or appurtenances thereto may be relocated on the Property until approved by the Architectural Control Committee.
- (c) Drainage Easement. Each Owner covenants to provide easements for drainage and water flow as contours and the arrangement of improvements constructed on the Lots require. There shall be no construction of improvements, temporary or permanent, in any drainage easement, except as provided in writing by the Architectural Control Committee and the City of Midlothian.
- (d) Surface Areas. The surface of easement areas for underground utility services may, with the written permission of the City of Midlothian, be used for the planting of shrubbery, trees, lawns or  flowers. However, neither Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants, or assigns, to any of the above mentioned vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in such easement area.

Section 7. Construction and Sale. Notwithstanding any provisions contained in the Declaration to the contrary, so long as the initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Property such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the sale of such Lots, including, but not limited to, construction offices, business



offices, signs, and sales offices, and the Declarant shall have an easement for access to such facilities, such use to be limited, however, to Lots owned by Declarant. This Section may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Section 7 shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon the Declarant's recording a written statement that all sales activity has ceased.

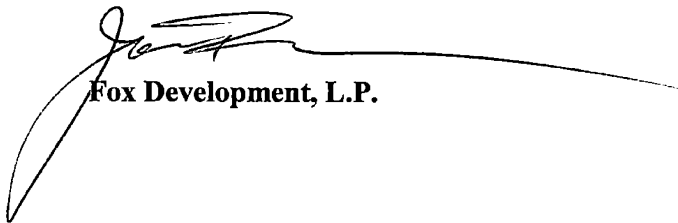
Section 8. Indemnification. The Association shall indemnify every officer and director against any and all expense, including attorneys' fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, 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 by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null, or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereto. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null, or void.

Section 10. Titles. The titles, headings, and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 11. Notwithstanding anything herein to the contrary, Declarant reserves the right to transfer, assign, mortgage, or pledge any and all of the respective privileges, rights, title, and interest hereunder, or in the Property or any part thereof, by means of recording an assignment of such in the Official Public Records of Ellis County, Texas. Upon such assignment, Declarant shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from or after the recording of such assignment. No successor assignee of the rights of Declarant shall have or incur any liability for the obligations or acts of any predecessor in interest.

EXECUTED this 1 of February, 2017.

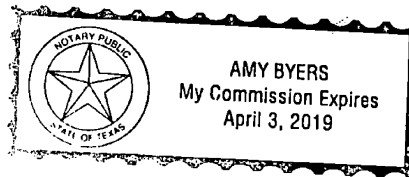
  
Fox Development, L.P.

STATE OF TEXAS

COUNTY OF ELLIS

This instrument was acknowledged before me on this 1 day of Feb., ~~2016~~<sub>17</sub>, by Fox Development, L.P.

  
Notary Public, State of Texas



**JOINDER BY MORTGAGEE**

The undersigned, being the sole Mortgagee and holding a Mortgage against the Property, joins in the execution of this Master Declaration for the purpose of subordinating the following liens and security interests of said Mortgagee (including, without limitation, those more fully set forth below) to the Master Declaration:

Promissory Note in the principal sum of nine hundred ninety five thousand (\$ 995,000.00), said note payable to and secured by a vendor's lien retained in Deed of record as Document No. 1624445 in the Official Public Records of Ellis County, Texas and additionally secured by a Deed of Trust of record as Document No. \_\_\_\_\_ in favor of \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_, Trustee.

The undersigned joins herein for the sole purpose of subordinating the liens described above to the Master Declaration and makes no representation or warranty, expressed or implied, of any nature whatsoever, to any present or future Owner or purchaser of a Lot with respect to such Lot or the Property. All such Owners or purchasers agree by their purchase of a Lot that no such representation or warranty has been made by the undersigned and that they have not relied upon the undersigned in any way in making their decision to acquire a Lot.

[INSERT NAME OF LENDER IF APPLICABLE]

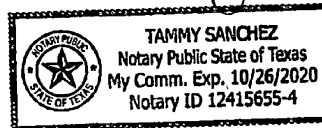
By: [Signature]  
Name: BRANDON VAUGHAN  
Title: EVP

THE STATE OF TEXAS

COUNTY OF ELLIS

This Master Declaration of Covenants, Conditions and Restrictions was acknowledged before me on this 9th day of March, 2017 by Brandon Vaughan (name), EVP (title) of The Cowboy Bank of Texas on behalf of said bank for the purposes and consideration therein expressed.

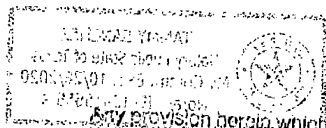
[Signature]  
Notary Public, State of Texas



**AFTER RECORDING, RETURN TO:**

Payne Concrete  
PO Box 1097  
Midlothian TX 76065

FILED FOR RECORD - ELLIS COUNTY, TX  
INST NO. 1706412  
ON Mar 09, 2017 at 03:10:00 PM



Any provision herein which restricts the sale, rental, or use of this described real property because of color or race is invalid and unenforceable under federal law.

STATE OF TEXAS, COUNTY OF ELLIS  
I hereby certify this instrument was filed on the date and time stamped herein and was duly recorded in the volume and page of the OFFICIAL PUBLIC RECORDS of Ellis County Texas and stamped hereon.



*Cindy Polley*  
COUNTY CLERK ELLIS COUNTY, TEXAS

TST Courtesy

126  
26 (1)

**BYLAWS  
FOR  
SKYVIEW ADDITION PROPERTY OWNERS ASSOCIATION, INC.  
(A Non-Profit Corporation)**

**ARTICLE 1  
GENERAL**

Section 1. Name. The name of the organization shall be Skyview Addition Property Owners Association, Inc. (the "Association").

Section 2. Applicability. These Bylaws provide for the government of the Property as defined herein and by that certain "Master Declaration of Covenants, Conditions and Restrictions for Skyview Addition" recorded in Instrument Number 1702931 of the Official Records of Ellis County, Texas, and any subsequent amendments thereto. These documents and any amendments thereto shall hereinafter for the purposes of these Bylaws be referred to as the "Declaration". Unless otherwise expressly defined herein, all capitalized terms shall be construed to have the meanings assigned to them in the Declaration.

Section 3. Compliance. All Lot Owners within the Property as well as their tenants, agents, patrons, employees, invitees, guests and any other person that might use the Lots, Private Streets or other Common Property within the subdivision shall comply with these Bylaws. The mere acquisition or rental of any of the Lots within the Property or the mere act of use or occupancy will signify that these Bylaws are accepted, ratified and will be strictly followed.

Section 4. Declarant. Fox Development, LP, a Texas limited partnership, executed the Declaration as "Declarant". Fox Development, LP developed the Property, and has now conveyed all the Lots within the Subdivision. Accordingly, pursuant to Article II, Section 3 of the Declaration, all Declarant rights have terminated and there is no longer a Class "B" Member of the Association.

Section 5. Lot. "Lot" or "Lots" shall mean any single-family lot within the Property, together with all Improvements located thereon.

Section 6. Lot Owner. "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of title to a Lot or Lots or Potential Lots, including, but not limited to, a developer, builder, or other person or entity holding title to a developed or undeveloped Lot or Lots, but specifically excluding a person or entity with an interest in a Lot or Lots merely as security for the performance of an obligation.

Section 7. Skyview Addition Restrictions. "The Skyview Addition Restrictions" shall mean, collectively, (i) the Master Declaration, together with any and all supplemental declarations including this Supplemental Declaration, as the same may be amended from time to time, (ii) the Design Guidelines, if any, adopted by the Architectural Control Committee of the Master Association, and the Certificate of Formation, Bylaws and Rules and Regulations of the

Master Association and the Sub-Association, from time to time in effect, as the same may be amended from time to time.

Section 8. **Property.** "Property" shall mean lots (the "Lots"), Skyview Addition, an addition to the City of Midlothian, Ellis County, Texas, according to the Final Plat thereof recorded in Cabinet I, Slide 671, of the Plat Records, of Ellis County, Texas (the "**Property**" or the "**Subdivision**"); and any other property which becomes subject to the Declaration.

## **ARTICLE 2** **CORPORATE OFFICE**

Section 1. **Principal Office.** The principal office of the Association shall be at 330 North 8<sup>th</sup> Street, #100, Midlothian, Texas 76065, unless otherwise determined by the Board of Directors (sometimes hereinafter referred to as the "Board").

Section 2. **Other Offices.** The Association may also have offices at such other places, both within and without the State of Texas, as the Board of Directors may from time to time determine or the business of the Association may require.

Section 3. **Registered Office and Registered Agent.** The Association shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office of the Association in the State of Texas, and the address of the registered office may be changed from time to time by the Board of Directors.

## **ARTICLE 3** **MEMBERS**

Section 1. **Composition of Membership.** All Lot Owners shall be Members of the "Association", and as such shall have the responsibility for administering the Common Properties, establishing the means and methods of collecting the assessments, arranging for the management of the Association, and performing all of the other acts that may be required to be performed by the Association and by the Declaration. Except as to those matters which the Declaration or these Bylaws specifically requires to be performed by the vote of the Lot Owners or by their First Mortgagees, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth in Article 5 hereof. Every record Lot Owner shall automatically become, upon acquisition of title, a "Member" of this Association and be subject to these Bylaws. Membership will cease, without any formal Association action, whenever such Member ceases to own title to a Lot.

Section 2. **Voting Rights.** All Lot Owners shall be entitled to voting rights in the Association with the right to cast one vote for each Lot owned. to be as provided in the Declaration. Where there is more than one record Lot Owner ("Co-owners"), all of those Co-owners shall be Members and may attend any meeting of the Association, but only one vote shall be cast with respect to each Lot. Co-owners owning the majority interests in a Lot shall from

time to time designate in writing one of their number to vote. Fractional votes among the Co-owners owning a single Lot shall not be allowed. Where no voting Co-owner is designated or if the designation has been revoked, the vote for the Lot shall be exercised as the Co-owners owning majority interests in the Lot mutually agree. No votes shall be cast for any Lot if the majority of the Co-owners present in person or by proxy and representing such Lot cannot agree to said vote. The non-voting Co-owner or Co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All corporate Owners must deliver to the Board of Directors a resolution of the Board of Directors of the corporate Owner executed by an officer of such corporate Owner designating an agent to vote for such corporate Owner on Association matters. Any other Owner (except for an Owner who is a natural person) must deliver to the Board of Directors such documents as the Board of Directors may reasonably require to evidence the designation of an agent to vote for such Owner on Association matters. All agreements and determinations lawfully made by the Association in accordance with the voting allocations established herein or in the Declaration affecting the Property, shall be binding on all Owners, their heirs, administrators, successors and assigns.

Section 3. Votes Required for Passage. At a meeting at which a quorum is present, the vote of the Members holding a majority of the votes represented in person or by proxy shall decide any question brought before the meeting, unless the question is one upon which the vote of a greater number is required by law, the Certificate of Formation, the Declaration or these Bylaws. The Members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 4. Proxy. A Member may vote either in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly made irrevocable on its face and unless otherwise made irrevocable by law; provided, however, notwithstanding the foregoing, every proxy shall be revocable and shall automatically terminate upon conveyance by a Member of his Lot. Each proxy shall be filed with the Secretary prior to or at commencement of the meeting.

Section 5. No Cumulative Voting. At each election for directors, each Class A Member entitled to vote shall have the right to vote, in person or by proxy, one (1) vote for each Lot. owned for each director to be elected and each Class B Member shall have three (3) such votes for each lot owned by it. Cumulative voting shall not be permitted.

Section 6. Voting Method. Voting on any question or in any election may be by voice vote or show of hands, unless the presiding officer shall order, or any Member shall demand, that voting be by written secret ballot.

**ARTICLE 4**  
**MEETINGS OF MEMBERS**

Section 1. Meeting Date. The first annual meeting of the Members, for the purpose of electing directors and transacting such other business as may properly be brought before the meeting, shall be held within one year from the date of incorporation of the Association, and subsequent annual meetings of the Members shall be held within one hundred twenty (120) days after the end of the fiscal year of the Association at such hour as shall be determined and stated in the notice of said meeting unless a different date is selected by vote of the Board of Directors..

Section 2. Meeting Place. All meetings of the Members shall be held at the principal office of the Association or at such other place, within the State of Texas, as may be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 3. Failure to Hold Annual Meeting. Failure to hold the annual meeting at the designated time shall not work as a dissolution of the Association. In the event the Board of Directors fails to call the annual meeting at the designated time, any Member may make demand that such meeting be held within a reasonable time. Such demand shall be made in writing by certified mail directed to any officer of the Association. The annual meeting shall thereafter be called within sixty (60) days following such demand.

Section 4. Special Meetings. Special meetings of the Members for any purpose or purposes may be called by the President, the Board of Directors, or the holders of not less than one-tenth (1/10) of all the votes entitled to vote at the meetings. No business other than that specified in the notice of meeting shall be transacted at a special meeting.

Section 5. Notice of Meetings.

5.1. Written Notice. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered at least fifteen (15) days, but not more than fifty (50) days, before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary or the officer or person or persons calling the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the membership rolls of the Association, with postage thereon prepaid.

5.2. Waiver. Notice may be waived in writing signed by the person or persons entitled to such notice. Such waiver may be executed at any time before or after the holding of such meeting. Attendance at a meeting shall constitute a waiver of notice, except where the person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 6. Informal Action By Members. Any action required by law to be taken at a meeting of the Members of the Association, or any action which may be taken at a meeting of



the Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to the subject thereof. Such consent shall have the same force and effect as a unanimous vote of Members and may be stated as such in any articles or documents filed with the Secretary of State.

Section 7. Quorum. The Members holding at least ten percent (10%) of the votes entitled to be cast at a meeting of the Members, represented in person or by proxy, as such votes are allocated pursuant to the provisions of these Bylaws and the Declaration, shall constitute a quorum at a meeting of the Members. If a quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote, represented in person or by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented any business may be transacted which might have been transacted at the original meeting.

Section 8. Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) Roll Call;
- (b) Proof of Notice of Meeting or Waiver of Notice;
- (c) Reading of Minutes of Preceding Meeting;
- (d) Reports of Officers and Board of Directors;
- (e) Report of Management Agent, if any, and if present;
- (f) Report of Committees, if any;
- (g) Election of Members of the Board of Directors (when so required);
- (h) Unfinished Business;
- (i) New Business;
- (j) Consideration of adequacy of reserves; and
- (k) Adjournment.

Section 9. Conduct of Meeting. The President or his designee shall preside over all meetings of the Members and the Secretary shall keep the minutes of the meeting and record in a Minute Book of the Association such resolutions as are adopted by the Members as well as a record of all transactions occurring thereat. Robert's Rules of Order (latest edition) as modified by the Board of Directors shall govern the conduct of all meetings of the Association when not in conflict with the Declaration or these Bylaws.

## **ARTICLE 5** **DIRECTORS**

Section 1. Management. The business and affairs of the Association shall be managed by the Board of Directors.

Section 2. Number of Directors. The number of directors as of the date of the institution of these Bylaws shall be three (3). Thereafter, the number of directors may be increased or decreased, from time to time by amendment of these Bylaws upon a two-thirds (2/3) vote of the

Members at the annual meeting or at a special meeting called for that purpose; provided, however the number of directors shall not be decreased to less than three (3). No decrease shall have the effect of shortening the term of any incumbent director. A director need not be a Lot Owner.

Section 3. Election and Term of Office. At the first annual meeting of the Association, Directors will be elected to serve a term of one (1) year. Unless removed in accordance with these Bylaws, each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

Section 4. Powers and Duties. The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Common Properties, and it may do all such acts and things as are not by law, by these Bylaws, or by the Declaration directed to be exercised and done exclusively by the Members. Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration, the Board of Directors is vested with, and responsible for, the following powers and duties:

(a) The power and duty to select, appoint and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, the Certificate of Formation, the Declaration and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board;

(b) The power and duty to conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations (the "The Village at Avery Park Rules") therefore consistent with the law, with the Certificate of Formation, the Declaration and these Bylaws, as the Board may deem necessary or advisable. Once duly adopted, The Village at Avery Park Rules shall be binding on Lot Owners within the Property as well as their tenants, agents, patrons, employees, invitees, guests and any other person that might use the Common Properties or other property within the subdivision in the same manner and enforceable to the same extent as the provisions of the Declaration, Certificate of Formation and these Bylaws;

(c) The power and duty to fix and levy from time to time regular annual assessments and special assessments upon the Members, as provided in the Declaration, to determine and fix the due date for the payment of such assessments, and the date upon which the same shall become delinquent; provided, however, that such assessments shall be fixed and levied only to provide for the payment of the authorized expenses of the Association and of taxes and assessments upon real or personal property owned, leased controlled or occupied by the Association, or for the payment of expenses for labor rendered or materials or supplies used and consumed, or equipment and appliances furnished for the maintenance, improvement or development of such property or for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Association for the health, safety, general benefit and welfare of its Members, in accordance with the provisions of the Declaration. Subject to any limitations imposed by the Declaration and these Bylaws, the Board

of Directors shall have the power and duty to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate funds for replacements as it shall deem to be necessary or advisable in the interest of the Association or welfare of its Members. The funds collected by the Board of Directors from the Members, attributable to replacement funds, for maintenance costs recurring less frequently than annually, and for capital improvements, shall at all times be held in trust for the Members and shall not be commingled with other assessments collected from the Members. Such Annual Assessments and Special Assessments shall be fixed in accordance with the provisions of these Bylaws and the Declaration. Should any Member fail to pay such assessments before delinquency, the Board of Directors in its discretion is authorized to enforce the payment of such delinquent assessments as provided herein and in the Declaration. Notwithstanding the foregoing, no Special Assessment levied by the Board of Directors shall become due and payable until the same has been ratified by the majority vote of the members present in person or by proxy at a meeting of the membership at which a quorum is present;

(d) The power and duty to enforce the Declaration and the Master Declaration as it pertains to Lots;

(e) The power and duty to contract for and pay fire, casualty, errors and omissions, blanket liability, malicious mischief, vandalism, and other insurance, insuring the Members, the Association, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration, insuring, covering and protecting against such damages or injuries as the Board deems advisable (which may include without limitation, medical expenses of persons injured on the Property). The Board shall review, not less frequently than annually and in advance of expiration dates, all insurance policies and bonds obtained on behalf of the Association by the Board or by agents of the Association;

(f) The power and duty to contract and pay for repairs, maintenance, gardening, utilities, materials and supplies, and services relating to the Property and to employ personnel necessary for the operation of the Property and to keep in good order, condition and repair, all of the Common Properties and all items of personal property used in the enjoyment of the entire premises, including the power to contract and pay for legal and accounting services, and to contract for and pay for Improvements on the Common Properties;

(g) The power and duty to accept assignment of or enter into license and/or maintenance agreements with the appropriate governmental authority to construct, maintain, repair and replace landscape improvements and irrigation systems within any public right-of-way crossing or abutting the Property;

(h) The power, but not the duty, to delegate its powers according to law;

(i) The power and the duty to grant and maintain easements where necessary for utilities, sewer facilities and other public purposes to serve the Property;

(j) The power and duty to adopt such rules and regulations ("The Village at Avery Park Rules and Regulations") as the Board may consider necessary for the management of the

Property, which The Village at Avery Park Rules and Regulations shall become effective and binding after (1) they are adopted by a majority of the Board at a duly called meeting, and (2) they are either mailed or otherwise delivered to each Member, and (3) they are posted in a conspicuous place on the Common Properties, or recorded. Such Rules and Regulations may address, without limitation, use of the Common Properties, signs, parking restrictions, minimum standards of property maintenance, and any other matter within the jurisdiction of the Association as provided in the Declaration; provided, however, that such The Village at Avery Park Rules shall be enforceable only to the extent that they are consistent with the Declaration, the Certificate of Formation and these Bylaws;

(k) The power and duty to keep, or cause to be kept, a complete record of all acts and corporate affairs of the Association and to present a statement thereof to the Members at the annual meeting of the Members and at any other time that such statement is requested by Members representing at least fifty percent (50%) of the total voting power of the Association;

(l) The power, but not the duty, to sell personal property of the Association; provided, however, that the prior vote or written approval of the Members entitled to cast at least a majority of the voting power of the Association must be obtained to sell, during any fiscal year, personal property of the Association;

(m) The irrevocable right of access to each Lot at reasonable hours as may be necessary for the maintenance, repair or replacement of any improvements to the Common Properties to prevent damage to the Common Properties;

(n) The irrevocable right of access to each Lot at any hour for the purpose of making emergency repairs necessary to prevent additional damage to the Common Properties;

(o) The power, but not the duty, to borrow funds in order to pay for any expenditure or outlay required pursuant to authority granted by the provisions of the Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary. Such indebtedness shall be the several obligation of all of the Owners;

(p) The power and the duty to establish a bank account or accounts for the common treasury and for all separate funds which are required or may be considered advisable by the Board of Directors;

(q) The power and duty to make repairs, additions, alterations and improvements to the Common Properties consistent with managing the Project in a manner in keeping with the character and quality of the neighborhood in which it is located, and consistent with the best interests of the Lot Owners, the Declaration and these Bylaws;

(r) To protect and defend the entire Common Properties from loss and damage by suit or otherwise;

(s) To keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof at any reasonable time by each of the Lot Owners and any first mortgagee of a Lot, and to cause a complete review of the books and accounts to be made by a competent, independent accountant, once each year. The Association shall cause to be prepared and delivered annually to each Owner a compilation statement showing all receipts, expenses or disbursements since the last such statement. Such financial statements shall be available to any first mortgagee of a Lot, on request, within ninety (90) days following the fiscal year end of the Association; and

(t) In general, to carry on the administration of this Association and to do all of those things, necessary and reasonable, in order to carry out the communal aspect of the Common Properties.

Section 5. Manager. The Board of Directors may employ for the Association a professional independent contractor ("Manager") at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. Provided, however, that any management contract entered into with such Manager may not be entered into for a term exceeding three (3) years, provided further that any such management contract may be terminated by the Association with or without cause during the time of the same upon thirty (30) days' prior written notice.

Section 6. Removal. Any director may be removed either for cause or without cause at a special meeting of the Members called for that purpose. Removal shall be accomplished by the affirmative vote of a majority (based on vote) of the Owners' votes entitled to be cast and represented in person or by proxy at such meeting which are entitled to vote for the election of such director.

Section 7. Vacancy. A vacancy on the Board of Directors may be filled either (1) by appointment at any meeting of the Board of Directors by a majority of the directors then in office, though less than a quorum, or (2) by election at a special meeting of the Members called for that purpose. Each successor director shall be elected or appointed for the unexpired term of his predecessor in office and shall serve until his successor shall be elected and shall qualify. Any directorship to be filled by reason of any increase in the number of directors shall be filled by election at an annual meeting of the Members or at a special meeting of the Members called for that purpose. No action by the Board of Directors shall be invalid solely for the reason that there existed one or more vacancies on the Board of Directors at such time.

Section 8. Committees.

8.1. Executive Committee. The Board of Directors, by resolution adopted by a majority of the full Board of Directors, may designate from among its members an executive committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the business and affairs of the Association except where action of the Board of Directors is specifically delegated by the Texas Non-Profit Corporation Act or other applicable law, the Certificate of Formation, or these Bylaws, but the designation of such committee and the delegation thereto of authority shall not

operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by law. The executive committee shall keep regular minutes of its proceedings and report the same to the Board when required by the Board. Actions by the Executive Committee shall be ratified by the Board of Directors within 90 days of said action.

8.2. Other Committees. Other committees not having and exercising the authority of the Board of Directors in the management of the Association may be designated and appointed by a resolution adopted by a majority of the directors at a meeting at which a quorum is present, or by the President when authorized by a like resolution of the Board of Directors. Membership on such committees may, but need not be, limited to directors.

8.3. Compensation. Directors, as such, shall not receive any salary for their services, but, by resolution of the Board a fixed sum, plus expenses of attendance, if any, may be paid for attendance at each regular or special meeting of the Board. Nothing herein shall be construed to preclude any director from serving the Association in any other capacity and receiving compensation therefore. Members of the executive committee may, by resolution of the Board of Directors, be allowed like compensation for attending committee meetings.

Section 9. Location of Meetings. The directors of the Association may hold regular or special meetings either within or without the State of Texas.

Section 10. Annual Meetings. The annual meeting of the Board of Directors shall be held without other notice than as provided in these Bylaws immediately after and at the same place as the annual meeting of the Members.

Section 11. Other Regular Meetings. The Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 12. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman, the President, or any two directors. Notice of the call of a special meeting shall be in writing and delivered for transmission to each of the directors not later than during the third day immediately preceding the day for which such meeting is called. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the director at his address as it appears in the records of the Association with postage thereon paid. Neither the business proposed to be transacted, nor the purpose of any special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 13. Telephonic Conference. Subject to the provisions for notice required by these Bylaws and the Texas Nonprofit Corporation Act for notice of meetings, directors may participate in and hold a meeting by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other. Participation in the meeting shall constitute presence in person at the meeting, except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 14. Waiver of Notice. Notice of any special meeting may be waived in writing signed by the person or persons entitled to such notice. Such waiver may be executed at any time before or after the holding of such meeting. Attendance of a director at a special meeting shall constitute a waiver of notice of such special meeting, except where a director attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 15. Quorum. A majority of the number of directors then in office shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless otherwise specifically required by law or these Bylaws. If a quorum is not present at any meeting of directors, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum is present.

Section 16. Conduct of Meeting. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep the minutes of the meeting and record in a Minute Book of the Board of Directors such resolutions that are adopted by the Board of Directors and a record of all transactions occurring thereat. Robert's Rules of Order (latest edition) as modified by the Board of Directors shall govern the conduct of all meetings of the Association when not in conflict with the Declaration or these Bylaws.

Section 17. Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors or any executive committee, or other committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members of the Board of Directors or executive committee then in office, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State.

Section 18. Chairman. The Board of Directors, by resolution adopted by a majority of the members then in office, may elect one from among their number to serve as chairman and preside at meetings of the Board. The chairman shall serve at the will of the Board of Directors. In absence of such election, the President shall preside at meetings of the Board of Directors.

Section 19. Fidelity Bonds. The Board of Directors shall require adequate fidelity bonds for all officers, directors, and employees of the Association handling or responsible for Association funds. The premiums of such bonds shall constitute an expense payable from assessment revenues.

## **ARTICLE 6** **OFFICERS**

Section 1. Designation of Officers. The officers of the Association shall be elected by the directors and shall be a president, a vice-president, a secretary and a treasurer. The Board of Directors may also elect additional vice-presidents, and one or more assistant secretaries and assistant treasurers. Any two or more offices may be held by the same person except that the

offices of president and secretary shall not be held by the same person. The duties of the offices of Secretary and Treasurer may be performed by a single individual and the title shall be "Secretary-Treasurer" unless the Board of Directors shall decide otherwise. No amendment of these Bylaws shall be required for the Board to elect a separate Secretary and Treasurer to perform the duties set out hereafter.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Association to serve until the next election of officers. Each officer shall hold office until his successor has been elected and qualifies, or until the death, resignation, or removal of the officer.

Section 3. Appointment of Other Officers and Agents. The Board of Directors may appoint such other officers and agents as it deems necessary. Such officers and agents shall be appointed for such term not to exceed one year and shall exercise such powers and perform such duties as may be determined from time to time by the Board.

Section 4. Removal. Any officer or agent elected or appointed by the Board of Directors, or members of the executive committee, may be removed at any time either for cause or without cause by the affirmative vote of a majority of the whole Board of Directors. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment shall not of itself create any contract right.

Section 5. Duties of President. The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Members and, in the absence of an elected chairman of the Board, at all meetings of the Board of Directors. The president shall present at each annual meeting of the Members and of the Board of Directors a report of the condition of the Association. The president shall cause to be called the regular and special meetings of the directors and the Members in accordance with these Bylaws. The president shall appoint and remove, employ and discharge and fix the compensation of all agents and employees of the Association other than himself, subject to the approval of the Board of Directors. The president shall sign and make contracts and agreements in the name of the Association. The president shall see that the books, reports, statements, and certificates required by law are properly kept. The president shall enforce these Bylaws and perform all of the duties normally incident to the position and office of the president.

Section 6. Duties of Vice-President. In the absence of the president or in the event of his inability or refusal to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order designated, or in the absence of any designation, in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the president. Each vice-president shall also have such powers and perform such other duties as from time to time may be assigned to him by the president or by the Board of Directors.



Section 7. Duties of Secretary. The secretary shall attend all meetings of the members and of the Board of Directors. In the absence of the secretary, either the treasurer or the vice-president shall keep the minutes. The secretary shall keep a true and complete record of the proceedings, including all votes and resolutions presented at these meetings, in a book to be kept for that purpose. The secretary shall be custodian of the records and of the seal, if any, of the Association, and shall affix the same, if the Association so has a seal, to documents, the execution of which is duly authorized. The secretary shall give or cause to be given all notices required by law, the Declaration, the Restrictive Covenants or these Bylaws. The secretary shall also perform such other duties as may be prescribed by the Board of Directors or the President. Minutes must be approved by the Board of Directors at their next regular meeting.

Section 8. Duties of Treasurer. The treasurer shall have the care and custody of and be responsible for the funds and properties of the Association and shall deposit such funds in the name of the Association in such depositories as the Board of Directors may from time to time designate. The treasurer shall sign, make and endorse in the name of the Association all checks, drafts, warrants, and orders for the payment of money and shall pay out and dispose of same and receipt therefore, under the direction of the president or the Board of Directors, unless such authority has been delegated to a management company acting on behalf of the Association. The treasurer shall disburse funds as directed by resolution of the Board of Directors, provided, however, that a resolution of the Board of Directors is not necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board of Directors. The treasurer shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. The treasurer shall exhibit at reasonable times and upon reasonable request his books and records of account to any director or Member of the Association. The treasurer shall cause an annual review of the Association books to be made by a certified public accountant, or public accountant, at the completion of each fiscal year; and shall, with the Board of Directors, prepare an annual budget and a statement of income and expenditures to be presented to the Members at the annual meeting, and deliver a copy of each to the Members. The treasurer shall also render a statement of the condition of the financial affairs of the Association at each regular meeting of the Board of Directors and at such other times as he may be directed by the Board of Directors or by the president.

## ARTICLE 7

### **LIABILITY AND INDEMNIFICATION OF OFFICERS AND DIRECTORS**

#### Section 1. Indemnification.

##### 1.1. Definitions. For purposes of this Section 1:

(a) References to the Association shall include any domestic or foreign predecessor entity of the Association in a merger, consolidation or other transaction in which the liabilities of the predecessor are transferred to the Association by operation of law and in any other transaction in which the Association assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Section.

(b) "Indemnitee" means (a) any present or former director, advisory director, or officer of the Association, (b) any person who, while serving in any of the capacities referred to in clause (a) hereof served at the Association's request as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and (c) any person nominated or designated by (or pursuant to authority granted by) the Board of Directors or any committee thereof to serve in any of the capacities referred to in clauses (a) or (b) hereof.

(c) "Official Capacity" means (a) when used with respect to a director, the office of director of the Association, and (b) when used with respect to a person other than a director, the elective or appointive office of the association held by such person or the employment or agency relationship undertaken by such person at the request of or on behalf of the Association, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan or any other enterprise.

(d) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratve or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

1.2. Indemnification. The Association shall indemnify an Indemnitee who was, is, or is threatened to be named defendant, respondent or witness in a Proceeding by reason, in whole or in part, of such person serving or having served, or having been nominated or designated to serve, in any of the capacities referred to in Subparagraph 1.1(b) above, against any judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the Proceeding if it is determined, in the manner described in Paragraph 1.3. below, that the person (1) conducted himself in good faith, (2) reasonably believed, in the case of conduct in his Official Capacity, that his conduct was in the Association's best interests, and in all other cases, that his conduct was at least not opposed to the Association's best interests, and (3) in the case of any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful; provided, however, that if the person is found liable to the Association or is found liable on the basis that personal benefit was improperly received by him, the indemnification (i) shall be limited to reasonable expenses actually incurred by the person in connection with the Proceedings and (ii) shall not be made in respect of any Proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his duty to the Association. The termination of a Proceeding by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements for indemnification set forth above. A person shall be deemed to have been found liable in respect of any claim, use or matter only after the person shall have been so adjudged by a court of competent jurisdiction. Notwithstanding any other provision of this Section, the Association shall pay or reimburse expenses incurred by an Indemnitee in connection with his appearance as a witness or other participant in a Proceeding at a time when he is not a named defendant or

respondent in the Proceeding. Reasonable expenses shall include, without limitation, all court costs and all fees and disbursements of attorneys for the Indemnitee.

1.3. Determinations. The determination required in Paragraph 1.2. above that an Indemnitee has satisfied the prescribed conduct and belief standards must be made (1) by a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the Proceeding, (2) if such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the Proceeding, (3) by special legal counsel selected by the Board of Directors or a committee of the Board by vote as set forth in clause (1) or (2) of this sentence, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors, or (4) by the Members in a vote that excludes the vote of the directors who are named defendants or respondents in the Proceeding. The determination as to reasonableness of expenses must be made in the same manner as the determination that the person has satisfied the prescribed conduct and belief standards, person has satisfied the prescribed conduct and belief standards, except that if the determination that the person has satisfied the prescribed conduct and belief standards is made by special legal counsel, the determination as to reasonableness of expenses must be made by the Board of Directors or a committee of the Board by vote as set forth in clause (1) or (2) of the immediately preceding sentence or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors.

1.4. Advancement of Expenses. Reasonable expenses incurred by an Indemnitee who was, is or is threatened to be made a named defendant or respondent in a Proceeding shall be paid or reimbursed by the Association, in advance of the final disposition of the Proceeding and without any of the determinations specified in Paragraph 1.3. above, after the Association receives a written affirmation by the Indemnitee of his good faith belief that he has met the standard of conduct necessary for indemnification under Paragraph 1.2. above and a written undertaking by or on behalf of such director to repay the amount paid or reimbursed if it is ultimately determined that he has not met those requirements. The written undertaking described in the immediately preceding sentence to repay the amount paid or reimbursed to him by the Association must be an unlimited general obligation of the Indemnitee but need not be secured, and it may be accepted without reference to financial ability to make repayment.

1.5. Insurance and Other Indemnification. The Association may purchase and maintain insurance or establish and maintain another arrangement on behalf of any Indemnitee against or in respect of any liability asserted against him and incurred by him, both as to action in his Official Capacity and as to action in any other capacity, whether or not the Association would have the power to indemnify him against that liability under these Bylaw or by statute. If the insurance or other arrangements is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the Association would not have the power to indemnify the person only if including coverage for the additional liability has been approved by the shareholders of the Association. Without limiting the power of the Association to purchase,

procure, establish or maintain any kind of insurance or other arrangement, the Association may, for the benefit of Indemnities, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Association; or (4) established a letter of credit, guaranty or surety arrangement. The insurance or other arrangement may be purchased, procured, maintained or established within the Association or with any insurer or other person deemed appropriate by the Board of Directors regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the Association. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive, and the insurance or arrangement shall not be voidable and shall not subject the directors approving the insurance or arrangement to liability, on any ground, regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.

1.6. Report to Members. Any indemnification of or advancement of expenses to an Indemnitee in accordance with this Section or the provisions of any statute shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

1.7. Entitlement. The indemnification provided by this Section shall (1) not be deemed exclusive of, or to preclude, any other rights to which those seeking indemnification may at any time be entitled under the Association's Certificate of Formation, any law, agreement or vote of Members or disinterested directors, or otherwise (2) continue as to a person who has ceased to be in the capacity by reason of which he was an Indemnitee with respect to matters arising during the period he was in such capacity, and (3) inure to the benefit of the heirs, executors and administrators of such a person.

1.8. Severability. The provisions of this Section are intended to comply with applicable provisions of the Texas Business Organizations Code. To the extent that any provision of this Section authorizes or requires indemnification or the advancement of expenses contrary to such statutes or the Certificate of Formation, the Association's power to indemnify or advance expenses under such provision shall be limited to that permitted by such statutes and the Certificate of Formation and any limitation required by such statutes or the Certificate of Formation shall not affect the validity of any other provision of this Section.

1.9. Effect of Amendment. No amendment, modification or repeal of this Section or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnities to be indemnified by the Association, nor the obligation of the Association to indemnify any such Indemnities, under and in accordance with the provisions of this Section as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

1.10. Statutory Changes. In the event the indemnification provided by this Section is more restrictive than the provisions of indemnification allowed by applicable provisions of the Texas Business Organizations Code, then those persons seeking indemnification shall be indemnified to the full extent permitted by applicable provisions of the Texas Business Organizations Code, as it may exist from time to time.

Section 2. Interested Directors and Officers.

2.1. If paragraph 2.2. below is satisfied, no contract or transaction between the Association and any of its directors or officers (or any other corporation, partnership, association or other organization in which any of them directly or indirectly have a financial interest) shall be void or voidable solely because of this relationship or because of the presence or participation of such director or officer at the meeting of the Board or committee authorizing such contract or transaction, or because such person's votes are counted for such purpose.

2.2. Paragraph 2.1. above will apply only if:

(a) The contract or transaction is fair to the Association as of the time it is authorized or ratified by the Board of Directors, a committee of the Board, or the Members; or,

(b) The material facts as to the relationship or interest of each such director or officer as to the contract or transaction are known or disclosed: (i) to the Members entitled to vote thereon and they nevertheless in good faith authorize or ratify the contract or transaction by a majority vote of the Members present; or (ii) to the Board of Directors and it nevertheless in good faith authorizes or ratifies the contract or transaction by a majority of the disinterested directors present, each such interested director to be counted in determining whether a quorum is present but not in calculating the majority necessary to carry the vote.

2.3. The provisions contained in paragraphs 2.1. and 2.2. above may not be construed to invalidate a contract or transaction which would be valid in the absence of such provisions.

**ARTICLE 8**  
**COMMON EXPENSES AND ASSESSMENTS**

Section 1. Determination of Common Expenses and Assessments.

1.1. Fiscal Year. The fiscal year of the Association shall coincide with each calendar year, unless otherwise designated by the Board of Directors.

1.2. Preparation and Approval of Budget. At least thirty (30) days before the end of each fiscal year the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount which it considers necessary to pay the cost of common utility services (i.e., water and sewer, gas, and electricity), electrical services,

maintenance, management, operation, repair and replacement of improvements to the Common Properties, and personal property owned by the Association (except in the case of fire loss), and the cost of wages, materials, insurance premiums, services, supplies and any other expenses that may be declared to be Common Expenses by these Bylaws, the Declaration or a resolution of the Board of Directors or Members, and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Common Properties and the personal property owned by the Association, and the rendering to the Owners of all related services, such costs and expenses being referred to herein as the "Common Expenses". The budget may also include:

1.2.1. The cost of the maintenance or repair of any Lot or improvement thereon in the event such maintenance or repair is reasonably necessary, in the discretion of the Board of Directors, (i) because of the excessive use or damage caused by willful or negligent acts by a Lot Owner or his guests, invitees, licensees, agents employees or patrons, (ii) to protect the Common Properties, (iii) to preserve the appearance or value of the Property or, (iv) to protect the interest of the general welfare of all Owners; provided, however, that no such special maintenance or repair shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the Owner of the Lots proposed to be maintained and provided further that the cost thereof shall be assessed against the Lots on which such maintenance or repair is performed; and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Lots, at which time the assessment shall become due and payable and shall be a continuing lien and obligation of said Owner in all respects as provided in the Declaration. Notwithstanding the foregoing, no Special Assessment levied by the Board of Directors shall become due and payable until the same has been ratified by the majority vote of the members present in person or by proxy at a meeting of the membership at which a quorum is present; and

1.2.2. Any amount necessary to discharge any lien or encumbrance levied against the Property or any portion thereof, which may, in the opinion of the Board of Directors, constitute a lien against the Association or any portion thereof.

1.3. Accounts. The Board shall establish no fewer than two (2) separate accounts (the "Operating Fund" and the "Capital Reserve Fund", or such other characterizations as the Board may determine, jointly known as the "Funds") into which shall be deposited all monies paid to the Association, and from which disbursement shall be made, as provided herein, in the performance of functions by the Association under the Declaration or these Bylaws. Each of the Funds shall be established as separate trust savings or trust checking accounts at a federally insured banking or lending institution. The Funds shall include: (1) an Operating Fund for current expenses of the Association, and (2) a Capital Reserve Fund for replacements and repairs of the Common Properties and other improvements within the Property to the extent necessary under the provisions of the Declaration and these Bylaws. The Board shall not commingle any amounts deposited into any of the Funds.

All amounts deposited into the Operating Fund and the Capital Reserve Fund must be used solely for the common benefit of all of the Owners for purposes authorized by the Declaration and these Bylaws as they may be amended from time to time. Disbursements for the Capital Reserve Fund shall be made by the Board only for the respective purposes specified in this Article VIII, the Declaration and/or Restrictive Covenants. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein and under the said Declaration and Restrictive Covenants for the common benefit of all the Lot Owners, other than those purposes for which disbursements from the Capital Reserve Fund are to be used. No provision contained herein shall limit, preclude or impair the establishment of other funds by the Association earmarked for specified purposes authorized by the Declaration and these Bylaws.

1.4. Notice of Budget. The Association Manager shall send to each Lot Owner a copy of the budget, in a reasonable itemized form which sets forth the amount of the Common Expenses payable by each Lot Owner, prior to the beginning of the fiscal year to which the budget applies. The said budget shall constitute the basis for determining each Lot Owner's contribution for the Common Expenses of the Association.

1.5. Payment of Assessments. The payment and collection of the assessment made pursuant to the foregoing provisions shall be in accordance with the terms providing for the payment and collection of assessments in these Bylaws and in the Declaration including without limitation the right reserved to the Board to recover reasonable attorneys' fees, interests and costs.

1.6. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of the Lot Owner's obligation to pay his allocable share of the assessments as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each Lot Owner shall continue to pay the assessment at the then existing rate established for the previous fiscal period until the new annual or adjusted budget shall have been mailed or delivered.

1.7. Capital Reserve Fund. The Board of Directors shall build up and maintain reasonable capital contributions for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against Capital Reserve Funds. If the Capital Reserve Funds are inadequate for any reason including non-payment of any Lot Owner's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Lot Owners equally, and which may be payable in a lump sum or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessment of all Lot Owners by a settlement in writing giving the amount and reason therefore, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment. The payment and collection of the assessment made pursuant to the foregoing provisions shall be in accordance with the terms providing for payment and collection of assessments in these Bylaws and in the Declaration, including without

limitations, the right reserved to the Board to accelerate payments of assessments and the right to recovery of reasonable attorneys' fees, interest and costs. Notwithstanding the foregoing, no Special Assessment levied by the Board of Directors shall become due and payable until the same has been ratified by the majority vote of the members present in person or by proxy at a meeting of the membership at which a quorum is present.

Section 2. Collection of Assessment. The Board of Directors may take prompt action to collect any assessments due from an Owner which remain unpaid for more than thirty (30) days from the date due for payment thereof.

Section 3. Delinquency and Acceleration. Any installment of an assessment provided for in these Bylaws shall become delinquent if not paid on the due date as established by the Board of Directors of the Association, pursuant to the provisions hereof or pursuant to the Declaration. With respect to each installment of an assessment not paid within thirty (30) days after its due date, the Board of Directors may, at its election, require the delinquent Lot Owner to pay a reasonable late charge, together with interest at the maximum rate permitted by law on such delinquent sums, calculated from the date of delinquency to and including the date full payment is received by the Association. If any installment of an Annual Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice, by certified mail return receipt requested, to the Lot Owner and to each First Mortgagee of a Lot which has requested a copy of the notice. Such notice shall specify, in addition to any information required to be provided under the Declaration, (1) the fact that the assessment is delinquent; (2) the action required to cure the default; (3) a date, not less than thirty (30) days from the date the notice is mailed to the Lot Owner, by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in foreclosure by the Association against the Lot. If the delinquent installments of the assessments of whatever nature, and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the Annual Assessment for the then current fiscal year, attributable to that Lot Owner and his or its Lot(s) to be immediately due and payable without further demand and may enforce the collection of the full Annual Assessment and any other assessments and all charges thereon in any manner authorized by law, these Bylaws and the Declaration.

## **ARTICLE 9**

### **JOINT OWNERSHIP**

Membership may be held in the name of more than one person, corporation or other entity. In the event ownership is in more than one person, corporation or other entity, all of the Co- owners shall be entitled collectively to only the vote in the management of the affairs of the Association as set forth in the Certificate of Formation, in the Declaration, and these Bylaws, and said vote may not be divided between Co-owners.



**ARTICLE 10**  
**OBLIGATION OF MEMBERS**

In addition to other obligations and duties set out in the Declaration and these Bylaws every Lot Owner shall:

- (a) Pay all assessments levied by the Association as due and as provided in the Declaration and these Bylaws.
- (b) Maintain, repair and replace, at his own cost and expense all portions of his Lot and improvements thereon requiring maintenance, repair, or replacement, as set forth in the Declaration and in the Restrictive Covenant instrument applicable to his or her section or phase of the subdivision, and subject to the right of the Architectural Review Committee to approve or disapprove alterations.
- (c) Conform to and abide by the The Village at Avery Park Restrictions, in regard to the use of a Lot, any improvements thereon, and the Common Properties,

**ARTICLE 11**  
**NOTICE OF HEARING PROCEDURE**

Section 1. Suspension of Privileges. In the event of an alleged violation of the Declaration, these Bylaws or any other Rules and Regulations of the Association, and after written notice of such alleged failure is delivered (in the manner prescribed in Section 2 of Article 11 hereof) to the Lot Owner or any agent of the Lot Owner (the "Respondent") alleged to be in default, the Board shall have the right, after affording the Respondent an opportunity for an appropriate hearing as here in-after provided, and upon an affirmative vote of a majority of all directors on the Board, to take any one or more of the following actions: (1) levy a special assessment if so provided in the Declaration and these Bylaws; (2) suspend or condition the right of said Lot Owner to use any facilities owned, operated or maintained by the Association; (3) suspend said Lot Owner's voting privileges in the Association as a Lot Owner, as further provided in the Declaration and these Bylaws; or (4) record a notice of noncompliance encumbering the Lots and/or residence of the Respondent. Any such suspension shall be for a period of not more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) suspension may be imposed for so long as the violation continues. No action against a Lot Owner arising from the alleged violation shall take effect prior to the expiration of (a) fifteen (15) days after the Lot Owner's receipt of the complaint pursuant to Section 2, and (b) five (5) days after the hearing required herein. The failure of the Board to enforce any Rules and Regulations of the Association, these Bylaws or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws, the Declaration, the Restrictive Covenants and the Certificate of Formation shall be cumulative and none shall be exclusive. However, any individual Lot Owner must exhaust all available internal remedies of the Association prescribed by these Bylaws, or by the The Village at Avery Park Rules, provided, however, that the foregoing limitation pertaining to exhausting

administrative remedies shall not apply to the Board or to any Lot Owner where the complaint alleges nonpayment of assessments.

Section 2. Written Complaint. A hearing to determine whether a right or privilege of the Respondent under the Declaration or these Bylaws should be suspended or conditioned, or whether a special assessment should be levied, shall be initiated by the filing of a written complaint by any Lot Owner or by any officer or member of the Board of Directors with the President of the Association or other presiding members of the Board. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged, and a reference to the specific provisions of the Declaration, these Bylaws or The Village at Avery Park Rules which the Respondent is alleged to have violated. A copy of the complaint shall be delivered by the Association to the Respondent in accordance with the notice procedures set forth in these Bylaws together with a statement which shall be substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the person named as "Respondent" in the accompanying complaint is delivered or mailed to the Board of Directors within fifteen (15) days after the complaint was delivered to you, the Board of Directors may proceed upon the complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense" to the Board of Directors at the address of the current President of the Board of Directors, which is as follows [insert address as required]

You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board of Directors, you may contact the Board at the address of the current President of the Board of Directors, which is as follows [insert address as required]

The Respondent shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely filed with the Board. The Respondent may file a separate statement by way of mitigation, even if he does not file a Notice of Defense.

Section 3. Notice of Hearing. If the Notice of Defense is timely filed, the Board shall deliver in the manner prescribed by the notice procedures set forth in these Bylaws a notice of hearing, on all interested parties at least ten (10) days prior to the hearing, if such hearing is requested by Respondent. The hearing shall be held no sooner than thirty (30) days, but not later than ninety (90) days after the complaint is mailed or delivered to the Respondent as provided in Section 2, above. The notice to the Respondent shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before the Board of Directors of Skyview Addition Property Owners Association, Inc. at \_\_\_\_\_ [address] on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at the hour of \_\_\_\_\_ upon the charges made in the complaint served upon you. You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by applying to the Board of Directors."

Section 4. Hearing. If the Notice of Defense is timely filed, the hearing shall be held before the Board in executive session on the date specified in the notice of hearing delivered to the Respondent. If the Notice of Defense is not timely filed, the Respondent's right to a hearing shall be waived and the Board, in executive session, may proceed upon the complaint without a hearing. Prior to the effectiveness of any sanction hereunder, proof of notice, and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director or other person who mailed or delivered such notice. The notice requirement shall be considered satisfied if the Respondent appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

## **ARTICLE 12** **MISCELLANEOUS**

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Funds. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

Section 4. Checks. All checks or demands for money and notes of the Association shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 5. Fiscal Year. The fiscal year of the Association shall coincide with each calendar year, unless otherwise designated by the Board of Directors.

Section 6. Books and Records. The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors, and committees having any authority of the Board of Directors, and shall keep at the registered or principal office all books and records of the Association for inspection by any director or his agent or attorney for any proper purpose at any reasonable time.

Section 7. Inspection of Books. Any person who is a Lot Owner, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, the books and records of account, minutes and records of the Members of the Association. Such person shall have the right to make extracts therefrom.

Section 8. Financial Records.

8.1. Records. The Association shall maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the Association, including all income and expenditures, in accordance with generally accepted accounting practices.

8.2. Annual Reports. Based on these records, the Board of Directors shall annually prepare or approve a report of the financial activity of the Association for the preceding year. The report must conform to accounting standards as promulgated by the American Institute of Certified Public Accountants and must include a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds.

8.3. Location of Financial Records and Reports. All records, books, and annual reports of the financial activity of the Association shall be kept at the registered office or principal office of the Association in this state for at least three years after the closing of each fiscal year and shall be available to all Lot Owners and their First Mortgagees for inspection and copying there during normal business hours. The Association may charge for the reasonable expense of preparing a copy of a record or report.

Section 9. Notices. All notices, demands, bills, statement or other communications under these Bylaws shall be in writing and shall be considered to have been duly given if delivered personally or if sent by U. S. first class, prepaid mail unless required to be sent by other methods in the Declaration or these Bylaws.

9.1. Owner. Notice to a Lot Owner, shall be sent to the address which the Lot Owner has designated in writing and filed with the Secretary, or if no such address is designated, at the address of the residence of such Lot Owner;

9.2. Association. Notice to the Association, the Board of Directors, or the Manager, if any, shall be sent to the principal office of one of them, or at such other address as shall be designated by the notice in writing to the Lot Owners pursuant to this Section.

Section 10. Invalidity. The invalidity of any part of these By laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

Section 11. Corporate Seal. The Board of Directors may provide a seal of the Association, which seal shall include the full name of the Association.

### **ARTICLE 13** **AMENDMENTS**

Section 1. Power to Amend. These Bylaws may be altered, amended, or repealed at any meeting of the Members at which a quorum is present, by the affirmative vote of a majority of the Members present at such meeting, provided notice of the proposed alteration, amendment, or repeal be contained in the notice of such meeting. Any amendment to these Bylaws which would conflict with the provisions of the Certificate of Formation, the Declaration or other applicable restrictive covenants shall be ineffective unless and until the appropriate provisions of the Certificate of Formation, the Declaration or other applicable restrictive covenants, whether one or more, as the case may be, are so amended in accordance with their respective amendment procedures.

### **ARTICLE 14** **CONFLICT**

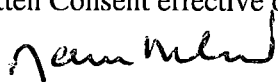
In the case of a conflict between the Certificate of Formation and the Bylaws, the Articles shall control and in case of conflict between the Declaration and these Bylaws, the Declaration shall control.

**CERTIFICATION**

I, the undersigned, do hereby certify:

THAT I am the Secretary of Skyview Addition Property Owners Association, Inc. a Texas non-profit corporation, and,

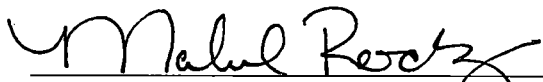
THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted by the Board of Directors by Unanimous Written Consent effective on April 25, 2018.

  
\_\_\_\_\_  
James Nelson, Secretary

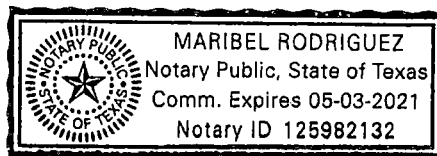
THE STATE OF TEXAS

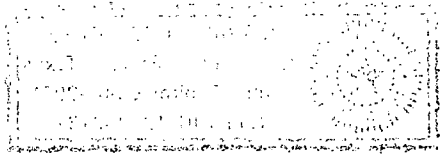
COUNTY OF ELLIS

This instrument was acknowledged before me on this the 25<sup>th</sup> day of April, 2018, by James Nelson, Secretary of Skyview Addition Property Owners Association, Inc. a Texas non-profit corporation, on behalf of said corporation.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas

**After Recording Return To:  
The Weichert Law Firm  
3821 Juniper Trace, Suite 106  
Austin, Texas**





Any provision herein which restricts the sale, rental, or use of this described real property because of color or race is invalid and unenforceable under federal law.  
STATE OF TEXAS, COUNTY OF ELLIS  
I hereby certify this instrument was filed on the date and time stamped herein and was duly recorded in the volume and page of the OFFICIAL PUBLIC RECORDS of Ellis County Texas and stamped hereon



*Cindy Polley*  
COUNTY CLERK ELLIS COUNTY, TEXAS

FILED FOR RECORD - ELLIS COUNTY, TX  
INST NO. 1841877  
ON APR 27, 2018 at 02:31:00 PM

STATE OF TEXAS

COUNTY OF ELLIS

ASSOCIATION MANAGEMENT CERTIFICATE  
FOR SKYVIEW ADDITION PROPERTY OWNERS ASSOCIATION, INC.

This Management Certificate is recorded pursuant to Section 209.004 of the Texas Property Code and is as follows:

1. **Name of Subdivision:** SKYVIEW ADDITION, an addition to the City of Midlothian, Ellis County, Texas

2. **Name of the Association:** Skyview Addition Property Owners Association, Inc.

3. **Recording Data for the Subdivision:**

SKYVIEW ADDITION, an addition to the City of Midlothian, Ellis County, Texas, according to the Final Plat thereof recorded in Cabinet I, Slide 671, of the Plat Records, of Ellis County, Texas

4. **Recording Data for the Declaration and other governing documents of the Association:**

Master Declaration of Covenants, Conditions and Restrictions for Skyview Addition, Instrument #1702931, Official Public Records, Ellis County, Texas

Corrected and Restated Bylaws, according to Instrument # \_\_\_\_\_, Official Public Records, Ellis County, Texas

5. **Name and Mailing address of the Association:** Skyview Addition Property Owners Association, Inc. c/o:

Value Builders  
c/o Melanie Brewer  
330 N. 8<sup>th</sup> Street, Suite 100  
Midlothian, TX 78065-2699  
Office: (972) 775-8112  
Email: [melanie@valuebuilders.com](mailto:melanie@valuebuilders.com)

6. **Association Website Address:** None (less than 60 lots).

7. At the time of purchase a lot may be subject to a lien for assessments and other sums previously unpaid by prior owner(s) including attorney's fees, interest, and other charges. You are advised to obtain a "resale certificate" from the Association management which



will verify whether there are unpaid amounts. Closing officers are asked to contact the managing agent to obtain further material to be presented to the buyer at closing.

8. The following fees associated with any transfer of property will be charged as applicable:

Resale Certificate Fulfillment Fee -- \$75.00 each

Request Update -- \$75.00 each

Transfer Fee -- \$100.00

Skyview Addition Property Owners Association, Inc.

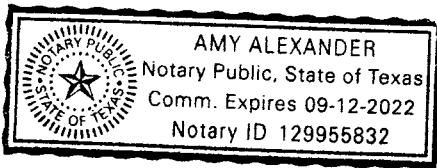


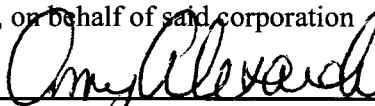
By: Corry Turley, President

STATE OF TEXAS

COUNTY OF ELLIS

This instrument was acknowledged before me on November 30, 2021, by Corry Turley, President of Skyview Addition Property Owners Association, Inc., a nonprofit corporation incorporated under the laws of the State of Texas, on behalf of said corporation



  
Notary Public, State of Texas

Printed name of Notary Amy Alexander

My Commission Expires: 9-12-2022

FILED FOR RECORD - ELLIS COUNTY, TEXAS  
INST NO. 2152855 on December 1, 2021 at 3:30 PM

STATE OF TEXAS      COUNTY OF ELLIS  
I hereby certify this instrument was filed on the date  
and time stamped hereon and was duly recorded in  
the records of Ellis County, Texas as stamped hereon.  
COUNTY CLERK, ELLIS COUNTY, TEXAS





**CORRECTION AND RESTATEMENT OF BYLAWS  
FOR  
SKYVIEW ADDITION PROPERTY OWNERS ASSOCIATION, INC.  
(A Non-Profit Corporation)**

Whereas the Bylaws for Skyview Addition Property Owners Association, Inc. filed of record with the Ellis County Clerk on April 27, 2018 contained numerous references to "The Village at Avery Park". This Correction and Restatement of Bylaws for Skyview Addition Property Owners Association, Inc. changes those erroneous references to "Skyview Addition".

**ARTICLE 1  
GENERAL**

Section 1. Name. The name of the organization shall be Skyview Addition Property Owners Association, Inc. (the "Association").

Section 2. Applicability. These Bylaws provide for the government of the Property as defined herein and by that certain "Master Declaration of Covenants, Conditions and Restrictions for Skyview Addition" recorded in Instrument Number 1702931 of the Official Records of Ellis County, Texas, and any subsequent amendments thereto. These documents and any amendments thereto shall hereinafter for the purposes of these Bylaws be referred to as the "Declaration". Unless otherwise expressly defined herein, all capitalized terms shall be construed to have the meanings assigned to them in the Declaration.

Section 3. Compliance. All Lot Owners within the Property as well as their tenants, agents, patrons, employees, invitees, guests and any other person that might use the Lots, Private Streets or other Common Property within the subdivision shall comply with these Bylaws. The mere acquisition or rental of any of the Lots within the Property or the mere act of use or occupancy will signify that these Bylaws are accepted, ratified and will be strictly followed.

Section 4. Declarant. Fox Development, LP, a Texas limited partnership, executed the Declaration as "Declarant". Fox Development, LP developed the Property, and has now conveyed all the Lots within the Subdivision. Accordingly, pursuant to Article II, Section 3 of the Declaration, all Declarant rights have terminated and there is no longer a Class "B" Member of the Association.

Section 5. Lot. "Lot" or "Lots" shall mean any single-family lot within the Property, together with all Improvements located thereon.

Section 6. Lot Owner. "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of title to a Lot or Lots or Potential Lots, including, but not limited to, a developer, builder, or other person or entity holding title to a developed or undeveloped Lot or Lots, but specifically excluding a person or entity with an interest in a Lot or Lots merely as security for the performance of an obligation.

Section 7. Skyview Addition Restrictions. "The Skyview Addition Restrictions" shall mean, collectively, (i) the Master Declaration, together with any and all supplemental declarations including this Supplemental Declaration, as the same may be amended from time to time, (ii) the Design Guidelines, if any, adopted by the Architectural Control Committee of the Master Association, and the Certificate of Formation, Bylaws and Rules and Regulations of the Master Association and the Sub-Association, from time to time in effect, as the same may be amended from time to time.

Section 8. Property. "Property" shall mean lots (the "Lots"), Skyview Addition, an addition to the City of Midlothian, Ellis County, Texas, according to the Final Plat thereof recorded in Cabinet I, Slide 671, of the Plat Records, of Ellis County, Texas (the "Property" or the "Subdivision"); and any other property which becomes subject to the Declaration.

## **ARTICLE 2**

### **CORPORATE OFFICE**

Section 1. Principal Office. The principal office of the Association shall be at 330 North 8<sup>th</sup> Street, #100, Midlothian, Texas 76065, unless otherwise determined by the Board of Directors (sometimes hereinafter referred to as the "Board").

Section 2. Other Offices. The Association may also have offices at such other places, both within and without the State of Texas, as the Board of Directors may from time to time determine or the business of the Association may require.

Section 3. Registered Office and Registered Agent. The Association shall have and continuously maintain in the State of Texas a registered office, and a registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, identical with the principal office of the Association in the State of Texas, and the address of the registered office may be changed from time to time by the Board of Directors.

## **ARTICLE 3**

### **MEMBERS**

Section 1. Composition of Membership. All Lot Owners shall be Members of the "Association", and as such shall have the responsibility for administering the Common Properties, establishing the means and methods of collecting the assessments, arranging for the management of the Association, and performing all of the other acts that may be required to be performed by the Association and by the Declaration. Except as to those matters which the Declaration or these Bylaws specifically requires to be performed by the vote of the Lot Owners or by their First Mortgagees, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth in Article 5 hereof. Every record Lot Owner shall automatically become, upon acquisition of title, a "Member" of this Association and be subject to these Bylaws. Membership will cease, without any formal Association action, whenever such Member ceases to own title to a Lot.

Section 2. Voting Rights. All Lot Owners shall be entitled to voting rights in the Association with the right to cast one vote for each Lot owned. to be as provided in the Declaration. Where there is more than one record Lot Owner ("Co-owners"), all of those Co-owners shall be Members and may attend any meeting of the Association, but only one vote shall be cast with respect to each Lot. Co-owners owning the majority interests in a Lot shall from time to time designate in writing one of their number to vote. Fractional votes among the Co-owners owning a single Lot shall not be allowed. Where no voting Co-owner is designated or if the designation has been revoked, the vote for the Lot shall be exercised as the Co-owners owning majority interests in the Lot mutually agree. No votes shall be cast for any Lot if the majority of the Co-owners present in person or by proxy and representing such Lot cannot agree to said vote. The non-voting Co-owner or Co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All corporate Owners must deliver to the Board of Directors a resolution of the Board of Directors of the corporate Owner executed by an officer of such corporate Owner designating an agent to vote for such corporate Owner on Association matters. Any other Owner (except for an Owner who is a natural person) must deliver to the Board of Directors such documents as the Board of Directors may reasonably require to evidence the designation of an agent to vote for such Owner on Association matters. All agreements and determinations lawfully made by the Association in accordance with the voting allocations established herein or in the Declaration affecting the Property, shall be binding on all Owners, their heirs, administrators, successors and assigns.

Section 3. Votes Required for Passage. At a meeting at which a quorum is present, the vote of the Members holding a majority of the votes represented in person or by proxy shall decide any question brought before the meeting, unless the question is one upon which the vote of a greater number is required by law, the Certificate of Formation, the Declaration or these Bylaws. The Members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 4. Proxy. A Member may vote either in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly made irrevocable on its face and unless otherwise made irrevocable by law; provided, however, notwithstanding the foregoing, every proxy shall be revocable and shall automatically terminate upon conveyance by a Member of his Lot. Each proxy shall be filed with the Secretary prior to or at commencement of the meeting.

Section 5. No Cumulative Voting. At each election for directors, each Class A Member entitled to vote shall have the right to vote, in person or by proxy, one (1) vote for each Lot owned for each director to be elected and each Class B Member shall have three (3) such votes for each lot owned by it. Cumulative voting shall not be permitted.

Section 6. Voting Method. Voting on any question or in any election may be by voice vote or show of hands, unless the presiding officer shall order, or any Member shall demand, that voting be by written secret ballot.

#### **ARTICLE 4** **MEETINGS OF MEMBERS**

Section 1. Meeting Date. The first annual meeting of the Members, for the purpose of electing directors and transacting such other business as may properly be brought before the meeting, shall be held within one year from the date of incorporation of the Association, and subsequent annual meetings of the Members shall be held within one hundred twenty (120) days after the end of the fiscal year of the Association at such hour as shall be determined and stated in the notice of said meeting unless a different date is selected by vote of the Board of Directors..

Section 2. Meeting Place. All meetings of the Members shall be held at the principal office of the Association or at such other place, within the State of Texas, as may be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 3. Failure to Hold Annual Meeting. Failure to hold the annual meeting at the designated time shall not work as a dissolution of the Association. In the event the Board of Directors fails to call the annual meeting at the designated time, any Member may make demand that such meeting be held within a reasonable time. Such demand shall be made in writing by certified mail directed to any officer of the Association. The annual meeting shall thereafter be called within sixty (60) days following such demand.

Section 4. Special Meetings. Special meetings of the Members for any purpose or purposes may be called by the President, the Board of Directors, or the holders of not less than one-tenth (1/10) of all the votes entitled to vote at the meetings. No business other than that specified in the notice of meeting shall be transacted at a special meeting.

#### Section 5. Notice of Meetings.

5.1. Written Notice. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered at least fifteen (15) days, but not more than fifty (50) days, before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary or the officer or person or persons calling the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the membership rolls of the Association, with postage thereon prepaid.

5.2. Waiver. Notice may be waived in writing signed by the person or persons entitled to such notice. Such waiver may be executed at any time before or after the holding of such meeting. Attendance at a meeting shall constitute a waiver of notice, except where the person

attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 6. Informal Action By Members. Any action required by law to be taken at a meeting of the Members of the Association, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to the subject thereof. Such consent shall have the same force and effect as a unanimous vote of Members and may be stated as such in any articles or documents filed with the Secretary of State.

Section 7. Quorum. The Members holding at least ten percent (10%) of the votes entitled to be cast at a meeting of the Members, represented in person or by proxy, as such votes are allocated pursuant to the provisions of these Bylaws and the Declaration, shall constitute a quorum at a meeting of the Members. If a quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote, represented in person or by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented any business may be transacted which might have been transacted at the original meeting.

Section 8. Order of Business. The order of business at all meetings of the Association shall be as follows:

- (a) Roll Call;
- (b) Proof of Notice of Meeting or Waiver of Notice;
- (c) Reading of Minutes of Preceding Meeting;
- (d) Reports of Officers and Board of Directors;
- (e) Report of Management Agent, if any, and if present;
- (f) Report of Committees, if any;
- (g) Election of Members of the Board of Directors (when so required);
- (h) Unfinished Business;
- (i) New Business;
- (j) Consideration of adequacy of reserves; and
- (k) Adjournment.

Section 9. Conduct of Meeting. The President or his designee shall preside over all meetings of the Members and the Secretary shall keep the minutes of the meeting and record in a Minute Book of the Association such resolutions as are adopted by the Members as well as a record of all transactions occurring thereat. Robert's Rules of Order (latest edition) as modified by the Board of Directors shall govern the conduct of all meetings of the Association when not in conflict with the Declaration or these Bylaws.

## **ARTICLE 5** **DIRECTORS**

Section 1. Management. The business and affairs of the Association shall be managed by the Board of Directors.

Section 2. Number of Directors. The number of directors as of the date of the institution of these Bylaws shall be three (3). Thereafter, the number of directors may be increased or decreased, from time to time by amendment of these Bylaws upon a two-thirds (2/3) vote of the Members at the annual meeting or at a special meeting called for that purpose; provided, however the number of directors shall not be decreased to less than three (3). No decrease shall have the effect of shortening the term of any incumbent director. A director need not be a Lot Owner.

Section 3. Election and Term of Office. At the first annual meeting of the Association, Directors will be elected to serve a term of one (1) year. Unless removed in accordance with these Bylaws, each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

Section 4. Powers and Duties. The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Common Properties, and it may do all such acts and things as are not by law, by these Bylaws, or by the Declaration directed to be exercised and done exclusively by the Members. Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration, the Board of Directors is vested with, and responsible for, the following powers and duties:

(a) The power and duty to select, appoint and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, the Certificate of Formation, the Declaration and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board;

(b) The power and duty to conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations (the "The Skyview Addition Rules") therefore consistent with the law, with the Certificate of Formation, the Declaration and these Bylaws, as the Board may deem necessary or advisable. Once duly adopted, The Skyview Addition Rules shall be binding on Lot Owners within the Property as well as their tenants, agents, patrons, employees, invitees, guests and any other person that might use the Common Properties or other property within the subdivision in the same manner and enforceable to the same extent as the provisions of the Declaration, Certificate of Formation and these Bylaws;

(c) The power and duty to fix and levy from time to time regular annual assessments and special assessments upon the Members, as provided in the Declaration, to determine and fix the due date for the payment of such assessments, and the date upon which the same shall become delinquent; provided, however, that such assessments shall be fixed and levied only to

provide for the payment of the authorized expenses of the Association and of taxes and assessments upon real or personal property owned, leased controlled or occupied by the Association, or for the payment of expenses for labor rendered or materials or supplies used and consumed, or equipment and appliances furnished for the maintenance, improvement or development of such property or for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Association for the health, safety, general benefit and welfare of its Members, in accordance with the provisions of the Declaration. Subject to any limitations imposed by the Declaration and these Bylaws, the Board of Directors shall have the power and duty to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate funds for replacements as it shall deem to be necessary or advisable in the interest of the Association or welfare of its Members. The funds collected by the Board of Directors from the Members, attributable to replacement funds, for maintenance costs recurring less frequently than annually, and for capital improvements, shall at all times be held in trust for the Members and shall not be commingled with other assessments collected from the Members. Such Annual Assessments and Special Assessments shall be fixed in accordance with the provisions of these Bylaws and the Declaration. Should any Member fail to pay such assessments before delinquency, the Board of Directors in its discretion is authorized to enforce the payment of such delinquent assessments as provided herein and in the Declaration. Notwithstanding the foregoing, no Special Assessment levied by the Board of Directors shall become due and payable until the same has been ratified by the majority vote of the members present in person or by proxy at a meeting of the membership at which a quorum is present;

(d) The power and duty to enforce the Declaration and the Master Declaration as it pertains to Lots;

(e) The power and duty to contract for and pay fire, casualty, errors and omissions, blanket liability, malicious mischief, vandalism, and other insurance, insuring the Members, the Association, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration, insuring, covering and protecting against such damages or injuries as the Board deems advisable (which may include without limitation, medical expenses of persons injured on the Property). The Board shall review, not less frequently than annually and in advance of expiration dates, all insurance policies and bonds obtained on behalf of the Association by the Board or by agents of the Association;

(f) The power and duty to contract and pay for repairs, maintenance, gardening, utilities, materials and supplies, and services relating to the Property and to employ personnel necessary for the operation of the Property and to keep in good order, condition and repair, all of the Common Properties and all items of personal property used in the enjoyment of the entire premises, including the power to contract and pay for legal and accounting services, and to contract for and pay for Improvements on the Common Properties;

(g) The power and duty to accept assignment of or enter into license and/or maintenance agreements with the appropriate governmental authority to construct, maintain, repair and replace landscape improvements and irrigation systems within any public right-of-way crossing or abutting the Property;



- (h) The power, but not the duty, to delegate its powers according to law;
- (i) The power and the duty to grant and maintain easements where necessary for utilities, sewer facilities and other public purposes to serve the Property;
- (j) The power and duty to adopt such rules and regulations ("The Skyview Addition Rules and Regulations") as the Board may consider necessary for the management of the Property, which The Skyview Addition Rules and Regulations shall become effective and binding after (1) they are adopted by a majority of the Board at a duly called meeting, and (2) they are either mailed or otherwise delivered to each Member, and (3) they are posted in a conspicuous place on the Common Properties, or recorded. Such Rules and Regulations may address, without limitation, use of the Common Properties, signs, parking restrictions, minimum standards of property maintenance, and any other matter within the jurisdiction of the Association as provided in the Declaration; provided, however, that such The Skyview Addition Rules shall be enforceable only to the extent that they are consistent with the Declaration, the Certificate of Formation and these Bylaws;
- (k) The power and duty to keep, or cause to be kept, a complete record of all acts and corporate affairs of the Association and to present a statement thereof to the Members at the annual meeting of the Members and at any other time that such statement is requested by Members representing at least fifty percent (50%) of the total voting power of the Association;
- (l) The power, but not the duty, to sell personal property of the Association; provided, however, that the prior vote or written approval of the Members entitled to cast at least a majority of the voting power of the Association must be obtained to sell, during any fiscal year, personal property of the Association;
- (m) The irrevocable right of access to each Lot at reasonable hours as may be necessary for the maintenance, repair or replacement of any improvements to the Common Properties to prevent damage to the Common Properties;
- (n) The irrevocable right of access to each Lot at any hour for the purpose of making emergency repairs necessary to prevent additional damage to the Common Properties;
- (o) The power, but not the duty, to borrow funds in order to pay for any expenditure or outlay required pursuant to authority granted by the provisions of the Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary. Such indebtedness shall be the joint and several obligation of all of the Owners;
- (p) The power and the duty to establish a bank account or accounts for the common treasury and for all separate funds which are required or may be considered advisable by the Board of Directors;

(q) The power and duty to make repairs, additions, alterations and improvements to the Common Properties consistent with managing the Project in a manner in keeping with the character and quality of the neighborhood in which it is located, and consistent with the best interests of the Lot Owners, the Declaration and these Bylaws;

(r) To protect and defend the entire Common Properties from loss and damage by suit or otherwise;

(s) To keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof at any reasonable time by each of the Lot Owners and any first mortgagee of a Lot, and to cause a complete review of the books and accounts to be made by a competent, independent accountant, once each year. The Association shall cause to be prepared and delivered annually to each Owner a compilation statement showing all receipts, expenses or disbursements since the last such statement. Such financial statements shall be available to any first mortgagee of a Lot, on request, within ninety (90) days following the fiscal year end of the Association; and

(t) In general, to carry on the administration of this Association and to do all of those things, necessary and reasonable, in order to carry out the communal aspect of the Common Properties.

Section 5. Manager. The Board of Directors may employ for the Association a professional independent contractor ("Manager") at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. Provided, however, that any management contract entered into with such Manager may not be entered into for a term exceeding three (3) years, provided further that any such management contract may be terminated by the Association with or without cause during the time of the same upon thirty (30) days' prior written notice.

Section 6. Removal. Any director may be removed either for cause or without cause at a special meeting of the Members called for that purpose. Removal shall be accomplished by the affirmative vote of a majority (based on vote) of the Owners' votes entitled to be cast and represented in person or by proxy at such meeting which are entitled to vote for the election of such director.

Section 7. Vacancy. A vacancy on the Board of Directors may be filled either (1) by appointment at any meeting of the Board of Directors by a majority of the directors then in office, though less than a quorum, or (2) by election at a special meeting of the Members called for that purpose. Each successor director shall be elected or appointed for the unexpired term of his predecessor in office and shall serve until his successor shall be elected and shall qualify. Any directorship to be filled by reason of any increase in the number of directors shall be filled by election at an annual meeting of the Members or at a special meeting of the Members called for that purpose. No action by the Board of Directors shall be invalid solely for the reason that there existed one or more vacancies on the Board of Directors at such time.

## Section 8. Committees.

8.1. Executive Committee. The Board of Directors, by resolution adopted by a majority of the full Board of Directors, may designate from among its members an executive committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the business and affairs of the Association except where action of the Board of Directors is specifically delegated by the Texas Non-Profit Corporation Act or other applicable law, the Certificate of Formation, or these Bylaws, but the designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by law. The executive committee shall keep regular minutes of its proceedings and report the same to the Board when required by the Board. Actions by the Executive Committee shall be ratified by the Board of Directors within 90 days of said action.

8.2. Other Committees. Other committees not having and exercising the authority of the Board of Directors in the management of the Association may be designated and appointed by a resolution adopted by a majority of the directors at a meeting at which a quorum is present, or by the President when authorized by a like resolution of the Board of Directors. Membership on such committees may, but need not be, limited to directors.

8.3. Compensation. Directors, as such, shall not receive any salary for their services, but, by resolution of the Board a fixed sum, plus expenses of attendance, if any, may be paid for attendance at each regular or special meeting of the Board. Nothing herein shall be construed to preclude any director from serving the Association in any other capacity and receiving compensation therefore. Members of the executive committee may, by resolution of the Board of Directors, be allowed like compensation for attending committee meetings.

Section 9. Location of Meetings. The directors of the Association may hold regular or special meetings either within or without the State of Texas.

Section 10. Annual Meetings. The annual meeting of the Board of Directors shall be held without other notice than as provided in these Bylaws immediately after and at the same place as the annual meeting of the Members.

Section 11. Other Regular Meetings. The Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 12. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman, the President, or any two directors. Notice of the call of a special meeting shall be in writing and delivered for transmission to each of the directors not later than during the third day immediately preceding the day for which such meeting is called. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the director at his address as it appears in the records of the Association with postage thereon paid. Neither the business proposed to be transacted, nor the purpose of any

special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 13. Telephonic Conference. Subject to the provisions for notice required by these Bylaws and the Texas Nonprofit Corporation Act for notice of meetings, directors may participate in and hold a meeting by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other. Participation in the meeting shall constitute presence in person at the meeting, except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 14. Waiver of Notice. Notice of any special meeting may be waived in writing signed by the person or persons entitled to such notice. Such waiver may be executed at any time before or after the holding of such meeting. Attendance of a director at a special meeting shall constitute a waiver of notice of such special meeting, except where a director attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 15. Quorum. A majority of the number of directors then in office shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless otherwise specifically required by law or these Bylaws. If a quorum is not present at any meeting of directors, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum is present.

Section 16. Conduct of Meeting. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep the minutes of the meeting and record in a Minute Book of the Board of Directors such resolutions that are adopted by the Board of Directors and a record of all transactions occurring thereat. Robert's Rules of Order (latest edition) as modified by the Board of Directors shall govern the conduct of all meetings of the Association when not in conflict with the Declaration or these Bylaws.

Section 17. Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors or any executive committee, or other committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members of the Board of Directors or executive committee then in office, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State.

Section 18. Chairman. The Board of Directors, by resolution adopted by a majority of the members then in office, may elect one from among their number to serve as chairman and preside at meetings of the Board. The chairman shall serve at the will of the Board of Directors. In absence of such election, the President shall preside at meetings of the Board of Directors.

Section 19. Fidelity Bonds. The Board of Directors shall require adequate fidelity bonds for all officers, directors, and employees of the Association handling or responsible for

Association funds. The premiums of such bonds shall constitute an expense payable from assessment revenues.

## **ARTICLE 6** **OFFICERS**

Section 1. Designation of Officers. The officers of the Association shall be elected by the directors and shall be a president, a vice-president, a secretary and a treasurer. The Board of Directors may also elect additional vice-presidents, and one or more assistant secretaries and assistant treasurers. Any two or more offices may be held by the same person except that the offices of president and secretary shall not be held by the same person. The duties of the offices of Secretary and Treasurer may be performed by a single individual and the title shall be "Secretary-Treasurer" unless the Board of Directors shall decide otherwise. No amendment of these Bylaws shall be required for the Board to elect a separate Secretary and Treasurer to perform the duties set out hereafter.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Association to serve until the next election of officers. Each officer shall hold office until his successor has been elected and qualifies, or until the death, resignation, or removal of the officer.

Section 3. Appointment of Other Officers and Agents. The Board of Directors may appoint such other officers and agents as it deems necessary. Such officers and agents shall be appointed for such term not to exceed one year and shall exercise such powers and perform such duties as may be determined from time to time by the Board.

Section 4. Removal. Any officer or agent elected or appointed by the Board of Directors, or members of the executive committee, may be removed at any time either for cause or without cause by the affirmative vote of a majority of the whole Board of Directors. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment shall not of itself create any contract right.

Section 5. Duties of President. The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Members and, in the absence of an elected chairman of the Board, at all meetings of the Board of Directors. The president shall present at each annual meeting of the Members and of the Board of Directors a report of the condition of the Association. The president shall cause to be called the regular and special meetings of the directors and the Members in accordance with these Bylaws. The president shall appoint and remove, employ and discharge and fix the compensation of all agents and employees of the Association other than himself, subject to the approval of the Board of Directors. The president shall sign and make contracts and agreements in the name of the Association. The president shall see that the books, reports, statements, and certificates required by law are properly kept. The president shall enforce these Bylaws and perform all of the duties normally incident to the position and office of the president.

Section 6. Duties of Vice-President. In the absence of the president or in the event of his inability or refusal to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order designated, or in the absence of any designation, in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the president. Each vice-president shall also have such powers and perform such other duties as from time to time may be assigned to him by the president or by the Board of Directors.

Section 7. Duties of Secretary. The secretary shall attend all meetings of the members and of the Board of Directors. In the absence of the secretary, either the treasurer or the vice-president shall keep the minutes. The secretary shall keep a true and complete record of the proceedings, including all votes and resolutions presented at these meetings, in a book to be kept for that purpose. The secretary shall be custodian of the records and of the seal, if any, of the Association, and shall affix the same, if the Association so has a seal, to documents, the execution of which is duly authorized. The secretary shall give or cause to be given all notices required by law, the Declaration, the Restrictive Covenants or these Bylaws. The secretary shall also perform such other duties as may be prescribed by the Board of Directors or the President. Minutes must be approved by the Board of Directors at their next regular meeting.

Section 8. Duties of Treasurer. The treasurer shall have the care and custody of and be responsible for the funds and properties of the Association and shall deposit such funds in the name of the Association in such depositories as the Board of Directors may from time to time designate. The treasurer shall sign, make and endorse in the name of the Association all checks, drafts, warrants, and orders for the payment of money and shall pay out and dispose of same and receipt therefore, under the direction of the president or the Board of Directors, unless such authority has been delegated to a management company acting on behalf of the Association. The treasurer shall disburse funds as directed by resolution of the Board of Directors, provided, however, that a resolution of the Board of Directors is not necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board of Directors. The treasurer shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. The treasurer shall exhibit at reasonable times and upon reasonable request his books and records of account to any director or Member of the Association. The treasurer shall cause an annual review of the Association books to be made by a certified public accountant, or public accountant, at the completion of each fiscal year; and shall, with the Board of Directors, prepare an annual budget and a statement of income and expenditures to be presented to the Members at the annual meeting, and deliver a copy of each to the Members. The treasurer shall also render a statement of the condition of the financial affairs of the Association at each regular meeting of the Board of Directors and at such other times as he may be directed by the Board of Directors or by the president.

**ARTICLE 7**  
**LIABILITY AND INDEMNIFICATION OF OFFICERS AND DIRECTORS**

Section 1. Indemnification.

1.1. Definitions. For purposes of this Section 1:

(a) References to the Association shall include any domestic or foreign predecessor entity of the Association in a merger, consolidation or other transaction in which the liabilities of the predecessor are transferred to the Association by operation of law and in any other transaction in which the Association assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Section.

(b) "Indemnitee" means (a) any present or former director, advisory director, or officer of the Association, (b) any person who, while serving in any of the capacities referred to in clause (a) hereof served at the Association's request as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and (c) any person nominated or designated by (or pursuant to authority granted by) the Board of Directors or any committee thereof to serve in any of the capacities referred to in clauses (a) or (b) hereof.

(c) "Official Capacity" means (a) when used with respect to a director, the office of director of the Association, and (b) when used with respect to a person other than a director, the elective or appointive office of the association held by such person or the employment or agency relationship undertaken by such person at the request of or on behalf of the Association, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan or any other enterprise.

(d) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratve or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

1.2. Indemnification. The Association shall indemnify an Indemnitee who was, is, or is threatened to be named defendant, respondent or witness in a Proceeding by reason, in whole or in part, of such person serving or having served, or having been nominated or designated to serve, in any of the capacities referred to in Subparagraph 1.1(b) above, against any judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the Proceeding if it is determined, in the manner described in Paragraph 1.3. below, that the person (1) conducted himself in good faith, (2) reasonably believed, in the case of conduct in his Official Capacity, that his conduct was in the Association's best interests, and in all other cases, that his conduct was at least not opposed to the Association's best interests, and (3) in the case of any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful; provided, however, that if the person is

found liable to the Association or is found liable on the basis that personal benefit was improperly received by him, the indemnification (i) shall be limited to reasonable expenses actually incurred by the person in connection with the Proceedings and (ii) shall not be made in respect of any Proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his duty to the Association. The termination of a Proceeding by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements for indemnification set forth above. A person shall be deemed to have been found liable in respect of any claim, use or matter only after the person shall have been so adjudged by a court of competent jurisdiction. Notwithstanding any other provision of this Section, the Association shall pay or reimburse expenses incurred by an Indemnitee in connection with his appearance as a witness or other participant in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding. Reasonable expenses shall include, without limitation, all court costs and all fees and disbursements of attorneys for the Indemnitee.

1.3. Determinations. The determination required in Paragraph 1.2. above that an Indemnitee has satisfied the prescribed conduct and belief standards must be made (1) by a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the Proceeding, (2) if such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the Proceeding, (3) by special legal counsel selected by the Board of Directors or a committee of the Board by vote as set forth in clause (1) or (2) of this sentence, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors, or (4) by the Members in a vote that excludes the vote of the directors who are named defendants or respondents in the Proceeding. The determination as to reasonableness of expenses must be made in the same manner as the determination that the person has satisfied the prescribed conduct and belief standards, person has satisfied the prescribed conduct and belief standards, except that if the determination that the person has satisfied the prescribed conduct and belief standards is made by special legal counsel, the determination as to reasonableness of expenses must be made by the Board of Directors or a committee of the Board by vote as set forth in clause (1) or (2) of the immediately preceding sentence or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors.

1.4. Advancement of Expenses. Reasonable expenses incurred by an Indemnitee who was, is or is threatened to be made a named defendant or respondent in a Proceeding shall be paid or reimbursed by the Association, in advance of the final disposition of the Proceeding and without any of the determinations specified in Paragraph 1.3. above, after the Association receives a written affirmation by the Indemnitee of his good faith belief that he has met the standard of conduct necessary for indemnification under Paragraph 1.2. above and a written undertaking by or on behalf of such director to repay the amount paid or reimbursed if it is ultimately determined that he has not met those requirements. The written undertaking described in the immediately preceding sentence to repay the amount paid or reimbursed to him by the



Association must be an unlimited general obligation of the Indemnitee but need not be secured, and it may be accepted without reference to financial ability to make repayment.

1.5. Insurance and Other Indemnification. The Association may purchase and maintain insurance or establish and maintain another arrangement on behalf of any Indemnitee against or in respect of any liability asserted against him and incurred by him, both as to action in his Official Capacity and as to action in any other capacity, whether or not the Association would have the power to indemnify him against that liability under these Bylaw or by statute. If the insurance or other arrangements is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the Association would not have the power to indemnify the person only if including coverage for the additional liability has been approved by the shareholders of the Association. Without limiting the power of the Association to purchase, procure, establish or maintain any kind of insurance or other arrangement, the Association may, for the benefit of Indemnities, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Association; or (4) established a letter of credit, guaranty or surety arrangement. The insurance or other arrangement may be purchased, procured, maintained or established within the Association or with any insurer or other person deemed appropriate by the Board of Directors regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the Association. In the absence of fraud, the judgment of the Board of Directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive, and the insurance or arrangement shall not be voidable and shall not subject the directors approving the insurance or arrangement to liability, on any ground, regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.

1.6. Report to Members. Any indemnification of or advancement of expenses to an Indemnitee in accordance with this Section or the provisions of any statute shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

1.7. Entitlement. The indemnification provided by this Section shall (1) not be deemed exclusive of, or to preclude, any other rights to which those seeking indemnification may at any time be entitled under the Association's Certificate of Formation, any law, agreement or vote of Members or disinterested directors, or otherwise (2) continue as to a person who has ceased to be in the capacity by reason of which he was an Indemnitee with respect to matters arising during the period he was in such capacity, and (3) inure to the benefit of the heirs, executors and administrators of such a person.

1.8. Severability. The provisions of this Section are intended to comply with applicable provisions of the Texas Business Organizations Code. To the extent that any provision of this Section authorizes or requires indemnification or the advancement of expenses

contrary to such statutes or the Certificate of Formation, the Association's power to indemnify or advance expenses under such provision shall be limited to that permitted by such statutes and the Certificate of Formation and any limitation required by such statutes or the Certificate of Formation shall not affect the validity of any other provision of this Section.

1.9. Effect of Amendment. No amendment, modification or repeal of this Section or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnities to be indemnified by the Association, nor the obligation of the Association to indemnify any such Indemnities, under and in accordance with the provisions of this Section as in effect immediately prior to such amendment, modification or repeal with respect to claims rising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

1.10. Statutory Changes. In the event the indemnification provided by this Section is more restrictive than the provisions of indemnification allowed by applicable provisions of the Texas Business Organizations Code, then those persons seeking indemnification shall be indemnified to the full extent permitted by applicable provisions of the Texas Business Organizations Code, as it may exist from time to time.

## Section 2. Interested Directors and Officers.

2.1. If paragraph 2.2. below is satisfied, no contract or transaction between the Association and any of its directors or officers (or any other corporation, partnership, association or other organization in which any of them directly or indirectly have a financial interest) shall be void or voidable solely because of this relationship or because of the presence or participation of such director or officer at the meeting of the Board or committee authorizing such contract or transaction, or because such person's votes are counted for such purpose.

2.2. Paragraph 2.1. above will apply only if:

(a) The contract or transaction is fair to the Association as of the time it is authorized or ratified by the Board of Directors, a committee of the Board, or the Members; or,

(b) The material facts as to the relationship or interest of each such director or officer as to the contract or transaction are known or disclosed: (i) to the Members entitled to vote thereon and they nevertheless in good faith authorize or ratify the contract or transaction by a majority vote of the Members present; or (ii) to the Board of Directors and it nevertheless in good faith authorizes or ratifies the contract or transaction by a majority of the disinterested directors present, each such interested director to be counted in determining whether a quorum is present but not in calculating the majority necessary to carry the vote.

2.3. The provisions contained in paragraphs 2.1. and 2.2. above may not be construed to invalidate a contract or transaction which would be valid in the absence of such provisions.

**ARTICLE 8**  
**COMMON EXPENSES AND ASSESSMENTS**

Section 1. Determination of Common Expenses and Assessments.

1.1. Fiscal Year. The fiscal year of the Association shall coincide with each calendar year, unless otherwise designated by the Board of Directors.

1.2. Preparation and Approval of Budget. At least thirty (30) days before the end of each fiscal year the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount which it considers necessary to pay the cost of common utility services (i.e., water and sewer, gas, and electricity), electrical services, maintenance, management, operation, repair and replacement of improvements to the Common Properties, and personal property owned by the Association (except in the case of fire loss), and the cost of wages, materials, insurance premiums, services, supplies and any other expenses that may be declared to be Common Expenses by these Bylaws, the Declaration or a resolution of the Board of Directors or Members, and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Common Properties and the personal property owned by the Association, and the rendering to the Owners of all related services, such costs and expenses being referred to herein as the "Common Expenses". The budget may also include:

1.2.1. The cost of the maintenance or repair of any Lot or improvement thereon in the event such maintenance or repair is reasonably necessary, in the discretion of the Board of Directors, (i) because of the excessive use or damage caused by willful or negligent acts by a Lot Owner or his guests, invitees, licensees, agents employees or patrons, (ii) to protect the Common Properties, (iii) to preserve the appearance or value of the Property or, (iv) to protect the interest of the general welfare of all Owners; provided, however, that no such special maintenance or repair shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the Owner of the Lots proposed to be maintained and provided further that the cost thereof shall be assessed against the Lots on which such maintenance or repair is performed; and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Lots, at which time the assessment shall become due and payable and shall be a continuing lien and obligation of said Owner in all respects as provided in the Declaration. Notwithstanding the foregoing, no Special Assessment levied by the Board of Directors shall become due and payable until the same has been ratified by the majority vote of the members present in person or by proxy at a meeting of the membership at which a quorum is present; and

1.2.2. Any amount necessary to discharge any lien or encumbrance levied against the Property or any portion thereof, which may, in the opinion of the Board of Directors, constitute a lien against the Association or any portion thereof.

1.3. Accounts. The Board shall establish no fewer than two (2) separate accounts (the "Operating Fund" and the "Capital Reserve Fund", or such other characterizations as the Board may determine, jointly known as the "Funds") into which shall be deposited all monies paid to the Association, and from which disbursement shall be made, as provided herein, in the performance of functions by the Association under the Declaration or these Bylaws. Each of the Funds shall be established as separate trust savings or trust checking accounts at a federally insured banking or lending institution. The Funds shall include: (1) an Operating Fund for current expenses of the Association, and (2) a Capital Reserve Fund for replacements and repairs of the Common Properties and other improvements within the Property to the extent necessary under the provisions of the Declaration and these Bylaws. The Board shall not commingle any amounts deposited into any of the Funds.

All amounts deposited into the Operating Fund and the Capital Reserve Fund must be used solely for the common benefit of all of the Owners for purposes authorized by the Declaration and these Bylaws as they may be amended from time to time. Disbursements for the Capital Reserve Fund shall be made by the Board only for the respective purposes specified in this Article VIII, the Declaration and/or Restrictive Covenants. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein and under the said Declaration and Restrictive Covenants for the common benefit of all the Lot Owners, other than those purposes for which disbursements from the Capital Reserve Fund are to be used. No provision contained herein shall limit, preclude or impair the establishment of other funds by the Association earmarked for specified purposes authorized by the Declaration and these Bylaws.

1.4. Notice of Budget. The Association Manager shall send to each Lot Owner a copy of the budget, in a reasonable itemized form which sets forth the amount of the Common Expenses payable by each Lot Owner, prior to the beginning of the fiscal year to which the budget applies. The said budget shall constitute the basis for determining each Lot Owner's contribution for the Common Expenses of the Association.

1.5. Payment of Assessments. The payment and collection of the assessment made pursuant to the foregoing provisions shall be in accordance with the terms providing for the payment and collection of assessments in these Bylaws and in the Declaration including without limitation the right reserved to the Board to recover reasonable attorneys' fees, interests and costs.

1.6. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of the Lot Owner's obligation to pay his allocable share of the assessments as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each Lot Owner shall continue to pay the assessment at the then existing rate established for the previous fiscal period until the new annual or adjusted budget shall have been mailed or delivered.

1.7. Capital Reserve Fund. The Board of Directors shall build up and maintain reasonable capital contributions for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against Capital Reserve Funds. If the Capital Reserve Funds are inadequate for any reason including non-payment of any Lot Owner's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Lot Owners equally, and which may be payable in a lump sum or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessment of all Lot Owners by a settlement in writing giving the amount and reason therefore, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment. The payment and collection of the assessment made pursuant to the foregoing provisions shall be in accordance with the terms providing for payment and collection of assessments in these Bylaws and in the Declaration, including without limitations, the right reserved to the Board to accelerate payments of assessments and the right to recovery of reasonable attorneys' fees, interest and costs. Notwithstanding the foregoing, no Special Assessment levied by the Board of Directors shall become due and payable until the same has been ratified by the majority vote of the members present in person or by proxy at a meeting of the membership at which a quorum is present.

1.8. Collection of Assessments. The Board of Directors may take prompt action to collect any assessments due from an Owner which remain unpaid for more than thirty (30) days from the date due for payment thereof.

Section 1.9. Delinquency and Acceleration. Any installment of an assessment provided for in these Bylaws shall become delinquent if not paid on the due date as established by the Board of Directors of the Association, pursuant to the provisions hereof or pursuant to the Declaration. With respect to each installment of an assessment not paid within thirty (30) days after its due date, the Board of Directors may, at its election, require the delinquent Lot Owner to pay a reasonable late charge, together with interest at the maximum rate permitted by law on such delinquent sums, calculated from the date of delinquency to and including the date full payment is received by the Association. If any installment of an Annual Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice, by certified mail return receipt requested, to the Lot Owner and to each First Mortgagee of a Lot which has requested a copy of the notice. Such notice shall specify, in addition to any information required to be provided under the Declaration, (1) the fact that the assessment is delinquent; (2) the action required to cure the default; (3) a date, not less than thirty (30) days from the date the notice is mailed to the Lot Owner, by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in foreclosure by the Association against the Lot. If the delinquent installments of the assessments of whatever nature, and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the Annual Assessment for the then current fiscal year, attributable to that Lot Owner and his or its Lot(s) to be immediately due and payable without further demand and may enforce the collection of the full Annual Assessment and any other assessments and all charges thereon in any manner authorized by law, these Bylaws and the Declaration.

**ARTICLE 9**  
**JOINT OWNERSHIP**

Membership may be held in the name of more than one person, corporation or other entity. In the event ownership is in more than one person, corporation or other entity, all of the Co- owners shall be entitled collectively to only the vote in the management of the affairs of the Association as set forth in the Certificate of Formation, in the Declaration, and these Bylaws, and said vote may not be divided between Co-owners.

**ARTICLE 10**  
**OBLIGATION OF MEMBERS**

In addition to other obligations and duties set out in the Declaration and these Bylaws every Lot Owner shall:

- (a) Pay all assessments levied by the Association as due and as provided in the Declaration and these Bylaws.
- (b) Maintain, repair and replace, at his own cost and expense all portions of his Lot and improvements thereon requiring maintenance, repair, or replacement, as set forth in the Declaration and in the Restrictive Covenant instrument applicable to his or her section or phase of the subdivision, and subject to the right of the Architectural Review Committee to approve or disapprove alterations.
- (c) Conform to and abide by the The Skyview Addition Restrictions, in regard to the use of a Lot, any improvements thereon, and the Common Properties,

**ARTICLE 11**  
**NOTICE OF HEARING PROCEDURE**

Section 1. Suspension of Privileges. In the event of an alleged violation of the Declaration, these Bylaws or any other Rules and Regulations of the Association, and after written notice of such alleged failure is delivered (in the manner prescribed in Section 2 of Article 11 hereof) to the Lot Owner or any agent of the Lot Owner (the "Respondent") alleged to be in default, the Board shall have the right, after affording the Respondent an opportunity for an appropriate hearing as here in-after provided, and upon an affirmative vote of a majority of all directors on the Board, to take any one or more of the following actions: (1) levy a special assessment if so provided in the Declaration and these Bylaws; (2) suspend or condition the right of said Lot Owner to use any facilities owned, operated or maintained by the Association; (3) suspend said Lot Owner's voting privileges in the Association as a Lot Owner, as further provided in the Declaration and these Bylaws; or (4) record a notice of noncompliance encumbering the Lots and/or residence of the Respondent. Any such suspension shall be for a period of not more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) suspension may be imposed for so long as the violation continues. No action against

a Lot Owner arising from the alleged violation shall take effect prior to the expiration of (a) fifteen (15) days after the Lot Owner's receipt of the complaint pursuant to Section 2, and (b) five (5) days after the hearing required herein. The failure of the Board to enforce any Rules and Regulations of the Association, these Bylaws or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws, the Declaration, the Restrictive Covenants and the Certificate of Formation shall be cumulative and none shall be exclusive. However, any individual Lot Owner must exhaust all available internal remedies of the Association prescribed by these Bylaws, or by the The Skyview Addition Rules, provided, however, that the foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board or to any Lot Owner where the complaint alleges nonpayment of assessments.

Section 2. Written Complaint. A hearing to determine whether a right or privilege of the Respondent under the Declaration or these Bylaws should be suspended or conditioned, or whether a special assessment should be levied, shall be initiated by the filing of a written complaint by any Lot Owner or by any officer or member of the Board of Directors with the President of the Association or other presiding members of the Board. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged, and a reference to the specific provisions of the Declaration, these Bylaws or The Skyview Addition Rules which the Respondent is alleged to have violated. A copy of the complaint shall be delivered by the Association to the Respondent in accordance with the notice procedures set forth in these Bylaws together with a statement which shall be substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the person named as "Respondent" in the accompanying complaint is delivered or mailed to the Board of Directors within fifteen (15) days after the complaint was delivered to you, the Board of Directors may proceed upon the complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense" to the Board of Directors at the address of the current President of the Board of Directors, which is as follows [insert address as required]

You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board of Directors, you may contact the Board at the address of the current President of the Board of Directors, which is as follows [insert address as required]

The Respondent shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely filed with the Board. The Respondent may file a separate statement by way of mitigation, even if he does not file a Notice of Defense.

Section 3. Notice of Hearing. If the Notice of Defense is timely filed, the Board shall deliver in the manner prescribed by the notice procedures set forth in these Bylaws a notice of hearing, on all interested parties at least ten (10) days prior to the hearing, if such hearing is requested by Respondent. The hearing shall be held no sooner than thirty (30) days, but not later than ninety (90) days after the complaint is mailed or delivered to the Respondent as provided in Section 2, above. The notice to the Respondent shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before the Board of Directors of Skyview Addition Property Owners Association, Inc. at \_\_\_\_\_ [address] on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at the hour of \_\_\_\_\_ upon the charges made in the complaint served upon you. You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by applying to the Board of Directors."

Section 4. Hearing. If the Notice of Defense is timely filed, the hearing shall be held before the Board in executive session on the date specified in the notice of hearing delivered to the Respondent. If the Notice of Defense is not timely filed, the Respondent's right to, a hearing shall be waived and the Board, in executive session, may proceed upon the complaint without a hearing. Prior to the effectiveness of any sanction hereunder, proof of notice, and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director or other person who mailed or delivered such notice. The notice requirement shall be considered satisfied if the Respondent appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

## **ARTICLE 12** **MISCELLANEOUS**

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.



Section 3. Funds. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

Section 4. Checks. All checks or demands for money and notes of the Association shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 5. Fiscal Year. The fiscal year of the Association shall coincide with each calendar year, unless otherwise designated by the Board of Directors.

Section 6. Books and Records. The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors, and committees having any authority of the Board of Directors, and shall keep at the registered or principal office all books and records of the Association for inspection by any director or his agent or attorney for any proper purpose at any reasonable time.

Section 7. Inspection of Books. Any person who is a Lot Owner, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, the books and records of account, minutes and records of the Members of the Association. Such person shall have the right to make extracts therefrom.

Section 8. Financial Records.

8.1. Records. The Association shall maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the Association, including all income and expenditures, in accordance with generally accepted accounting practices.

8.2. Annual Reports. Based on these records, the Board of Directors shall annually prepare or approve a report of the financial activity of the Association for the preceding year. The report must conform to accounting standards as promulgated by the American Institute of Certified Public Accountants and must include a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds.

8.3. Location of Financial Records and Reports. All records, books, and annual reports of the financial activity of the Association shall be kept at the registered office or principal office of the Association in this state for at least three years after the closing of each fiscal year and shall be available to all Lot Owners and their First Mortgagees for inspection and copying there during normal business hours. The Association may charge for the reasonable expense of preparing a copy of a record or report.

Section 9. Notices. All notices, demands, bills, statement or other communications under these Bylaws shall be in writing and shall be considered to have been duly given if delivered personally or if sent by U. S. first class, prepaid mail unless required to be sent by other methods in the Declaration or these Bylaws.

9.1. Owner. Notice to a Lot Owner, shall be sent to the address which the Lot Owner has designated in writing and filed with the Secretary, or if no such address is designated, at the address of the residence of such Lot Owner;

9.2. Association. Notice to the Association, the Board of Directors, or the Manager, if any, shall be sent to the principal office of one of them, or at such other address as shall be designated by the notice in writing to the Lot Owners pursuant to this Section.

Section 10. Invalidity. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

Section 11. Corporate Seal. The Board of Directors may provide a seal of the Association, which seal shall include the full name of the Association.

### **ARTICLE 13** **AMENDMENTS**

Section 1. Power to Amend. These Bylaws may be altered, amended, or repealed at any meeting of the Members at which a quorum is present, by the affirmative vote of a majority of the Members present at such meeting, provided notice of the proposed alteration, amendment, or repeal be contained in the notice of such meeting. Any amendment to these Bylaws which would conflict with the provisions of the Certificate of Formation, the Declaration or other applicable restrictive covenants shall be ineffective unless and until the appropriate provisions of the Certificate of Formation, the Declaration or other applicable restrictive covenants, whether one or more, as the case may be, are so amended in accordance with their respective amendment procedures.

### **ARTICLE 14** **CONFLICT**

In the case of a conflict between the Certificate of Formation and the Bylaws, the Articles shall control and in case of conflict between the Declaration and these Bylaws, the Declaration shall control.

**CERTIFICATION**

I, the undersigned, do hereby certify:

THAT I am the President of Skyview Addition Property Owners Association, Inc. a Texas non-profit corporation, and,

THAT the foregoing Bylaws constitute the corrected original Bylaws of said Association, as duly adopted by the Board of Directors by Unanimous Written Consent effective on April 27, 2018.

Skyview Addition Property Owners Association, Inc

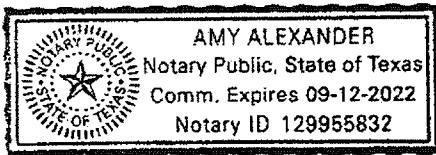


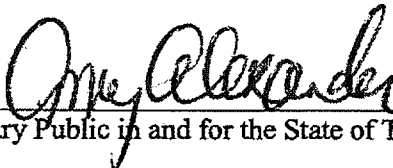
\_\_\_\_\_  
Corry Turley, President

THE STATE OF TEXAS

COUNTY OF ELLIS

This instrument was acknowledged before me on November 30, 2021, by Corry Turley, President of Skyview Addition Property Owners Association, Inc. a Texas non-profit corporation, on behalf of said corporation.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

**After Recording Return To:  
The Weichert Law Firm  
3821 Juniper Trace, Suite 106  
Austin, Texas**

FILED FOR RECORD - ELLIS COUNTY, TEXAS  
INST NO. 2152856 on December 1, 2021 at 3:31 PM

Bylaws – Skyview Addition Property Owners Association, Inc.

STATE OF TEXAS      COUNTY OF ELLIS  
I hereby certify this instrument was filed on the date  
and time stamped hereon and was duly recorded in  
the records of Ellis County, Texas as stamped hereon.  
COUNTY CLERK, ELLIS COUNTY, TEXAS



