

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

STATE OF TEXAS           §  
                                  §       KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF COLLIN       §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PRESTWYCK (as may be amended from time to time, the "Declaration") is made by 206 McKinney, LLC, a Texas limited liability company ("Declarant").

**WITNESSETH:**

Declarant, as the owner of the real property described in Exhibit A, and Lennar Homes of Texas Land and Construction, Ltd., a Texas limited partnership Lennar Homes of Texas, as the owner of the real property described in Exhibit B, intends by recording this Declaration in the Official Public Records of Collin County, Texas, to create a general plan of development for a single-family home planned community known as Prestwyck. This Declaration provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the Property (as hereinafter defined). An integral part of the development plan is the creation of Prestwyck Homeowners Association, Inc., a Texas non-profit corporation whose members shall be all owners of real property subject to this Declaration, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce the covenants, conditions, restrictions, and easements set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the property described in Exhibit A, and any additional property which is subjected to this Declaration in the future in accordance with Article XIV of this Declaration, shall be owned, conveyed, used, occupied and otherwise encumbered subject to this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

**ARTICLE I  
DEFINITIONS**

The terms used in this Declaration are intended to have their normal, commonly understood definitions, unless otherwise specified. In order to minimize repetition, avoid confusion, and explain key concepts, some terms are capitalized to indicate they have special definitions. Whenever used in capitalized form, those terms have the following meanings:

- (a) "Architectural Control Committee" and/or "ACC" shall mean and refer to the architectural review body for the Property, as described in Article III.

(b) "Association" shall mean and refer to Prestwyck Homeowners Association, Inc., a Texas non-profit corporation whose Certificate of Formation is attached hereto as Exhibit B, and which shall have the right to enforce this Declaration.

(c) "Board of Directors" or "Board" shall mean and refer to the body selected as provided in the Bylaws, being responsible for the general governance and administration of the Association and this Declaration. The initial Board shall be those individuals set forth in the Certificate of Formation and, during the time the Declarant has the right to appoint all Directors to the Board, must consist of at least one representative designated by Lennar Homes of Texas, Inc. ("Lennar"), at least one representative designated by Beazer Homes of Texas, L.P. ("Beazer"), and at least one representative designated by First Texas Homes, Inc. ("First Texas"), as set forth in Section 8.2 herein.

(d) "Builder" shall mean and refer to any person or entity who has acquired a Lot or Lots for the purpose of constructing a residence thereon for later sale to consumers.

(e) "Bylaws" shall mean and refer to the Bylaws of Homeowners Association of Prestwyck Homeowners Association, Inc. approved by the Board of Directors, as may be amended from time to time.

(f) "Common Properties" shall mean all real property (including improvements thereon) now or hereafter owned, leased or controlled by the Association, or to which the Association holds possessory or use rights, for the common use and enjoyment of the Owners (hereinafter defined) including, but not limited to such property which may be: (i) conveyed to the Association in fee simple title, (ii) leased to the Association, (iii) landscape or maintenance easements granted or dedicated to the Association by plat or other written instrument, (iv) retention ponds within the Property, and (v) any other real property or improvement the Association, at the sole discretion of the Board, decides to maintain.

(g) "Community-Wide Standard" shall mean the standard of conduct, maintenance and appearance, including landscaping, generally prevailing throughout the Property, or the minimum standards established pursuant to the Design Guidelines, Rules and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard. The Association, through its Board, shall ensure that the Community-Wide Standard established by the Declaration for the Property shall continue after the termination or expiration of the Class B membership. The Community-Wide Standard may contain objective elements, such as specific lawn or house maintenance requirements, and subjective elements, such as matters subject to the Board's discretion. The Community-Wide Standard may or may not be in writing. The Community-Wide Standard may evolve as development progresses and as the Property changes. The Community-Wide Standard shall not fall below the level established for the Property as of the date the Class B membership terminates or expires.

(h) "County" shall mean and refer to Collin County, Texas.

(i) "Declarant" shall mean and refer to not only 206 McKinney, LLC, a Texas limited liability company, but also any successor, alternate or additional Declarant as appointed by 206

(p) "Prestwyck" or "Property" shall mean and refer to the real property described on Exhibit A, any improvements now or hereafter situated thereon, and any and all additional real property (and the improvements thereon) which Declarant hereafter subjects to this Declaration, in accordance with Article XIV hereof.

(q) "Street Tree Guidelines" shall mean and refer to the requirements for the installation, maintenance and replacement of trees and other landscaping on each Lot and within the Property, including a detailed list of approved trees and landscaping for Prestwyck, as may be adopted by the Declarant and as may be amended in accordance with Article III.

(r) "Supplemental Declaration" shall mean a recorded instrument which accomplishes one or more of the following purposes: (i) subjects additional real property to this Declaration, or (ii) imposes, expressly or by reference, additional restrictions, covenants, easements and/or rights and obligations on the land described.

## ARTICLE II CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

### Section 2.1 Residential Use.

The Property shall be used for single-family residential purposes and home office only. No building or other structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family residence per Lot, which residence may not exceed three (3) stories in height, and a private garage as provided below. Any building or structure to be placed or constructed on a Lot is subject to approval in writing by the Reviewer under Article III.

### Section 2.2 Single-Family Use.

Each residence may be occupied only by persons living and cooking together as a single housekeeping unit, together with any household employees. Except for families consisting of persons related by blood, adoption, or marriage, no more than two persons per bedroom may occupy the same dwelling on a regular and consistent basis.

### Section 2.3 Garage Required.

Each residence shall have an enclosed garage and shall conform to the requirements set forth in the Design Guidelines. The garage shall conform in design and materials with the main structure.

### Section 2.4 Driveways.

All driveways shall be surfaced with concrete.

Section 2.5 Uses Specifically Prohibited.

(a) No temporary dwelling, shop, storage building, trailer or mobile home of any kind or any improvement of a temporary character shall be permitted on any Lot except (i) children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, which may be placed on a Lot subject to approval in accordance with Article III and provided no part of any such structure is visible from any front or side street, and (ii) the Builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a given Lot during construction of the residence on that Lot or on a different Lot as agreed to between the Builder or contractor and Declarant and/or as otherwise set out in the Design Guidelines. No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected.

(b) Except as otherwise provided in this Section, no vehicle may be parked or left upon any portion of a Lot except in a garage or on a driveway. Except as provided below, the following vehicles may not be parked on any street within Prestwyck and may be parked only in an enclosed garage or on a driveway which is accessed by an alley (provided there is at least one (1) additional space outside of the garage for parking in the rear of the Lot and provided such vehicles are twenty feet (20') or less in length): recreational vehicles, mobile homes, trailers, campers, stored vehicles, trucks with tonnage in excess of one (1) ton, commercial vehicles (including all vehicles with commercial lettering or logos), and unlicensed or inoperable vehicles. "Sports utility vehicles" and "mini-vans" (as such vehicles are commonly referred to, as determined in the Board's discretion) and pick-up trucks without commercial writing or logos shall be treated as automobiles and may be parked outside of enclosed garages. Boats may be kept or stored in a side or rear yard on a Lot if completely concealed from the view of any street (other than an alley). This Section shall not apply to parking, for purposes of emergency vehicle repairs or to construction, service, and delivery vehicles for periods necessary to perform the services or make a delivery.

Notwithstanding the above, for purposes of cleaning, loading, unloading [for a period of 24 hours prior to departure and upon return from a trip], and short-term and visitor parking, any vehicle may be parked outside of an enclosed garage temporarily and irregularly to accommodate such use. The Board, in its discretion, may enact additional rules governing such temporary, irregular use or, in the absence of specific rules, shall have discretion in determining what constitutes permissible parking under such circumstances.

As used in this Section, the term "vehicles" includes, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

(c) No vehicle of any size which transports flammable or explosive cargo may be kept or parked on the Property at any time, except for use by or on behalf of Declarant in connection with the development of the Property or by a builder or contractor in connection with the construction of improvements on a Lot.

(d) No animals or livestock shall be raised, bred or kept on the Property for commercial purposes or for food. Dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, constitute a nuisance to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may, at its sole discretion, remove or otherwise provide for the removal of the pet. Notwithstanding anything contained herein to the contrary, the Board in its sole discretion and without incurring any further duty or obligation to owners and occupants within the Property, may decide to take no action and refer complaining parties to the appropriate municipal or governmental authorities for handling and final disposition. Pets shall be kept on a leash or otherwise confined inside a fenced area whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law and must be properly tagged for identification. It is the Owner's responsibility to keep the front of their Lot clean and free of pet debris and to pick up and properly dispose of their pet's waste wherever deposited. Notwithstanding anything seemingly herein to the contrary, no more than three (3) household pets will be permitted on each Lot.

(e) No Lot or other area on the Property shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation broken or rusty equipment, disassembled or inoperative cars, other vehicles or discarded appliances and furniture. Trash, garbage or other waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or other disposal of such material shall be kept in clean and sanitary condition. Materials incident to construction of improvements may be stored on Lots during construction so long as construction progresses without undue delay.

(f) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any wall or window of a residence. All air-conditioning equipment must be installed in the rear yard or on the side yard.

(g) The erection, construction, placement or installation of any television, radio or other electronic tower, aerial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcast signals or other means of communication upon a Lot or upon any improvement thereon is prohibited, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Board shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that reception of an acceptable signal would not be impaired or the cost of installation would not be unreasonably increased, an antenna permissible pursuant to the Declaration or the rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land-use and building regulations.

(h) No Lot or improvement thereon shall be used for commercial or manufacturing purposes of any kind other than a small home office. Nothing in this subparagraph shall prohibit a builder's use of a residence as a sales office until such builder's last residence on the Property is sold and closed. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as a small home office, tutoring or giving lessons such as art or music, so long as such activities are consistent with the residential character of the Property, do not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Property, as determined in the Board's discretion, and do not materially increase the number of cars parked on the street.

(i) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and six feet (6') above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within ten (10) feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(j) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment which specifically conform with the Design Guidelines and the requirements of Section 2.5 (a) herein, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.

(k) No sign of any kind shall be displayed to the public view on any Lot, except: (i) political signs which may be placed on the Lot no earlier than six (6) weeks prior to an election and which must be removed within two (2) weeks after the election for which such sign is displayed; (ii) one (1) professional security service sign of not more than one square foot; (iii) one (1) sign of not more than five square feet advertising the property for rent or sale during any period that the Lot actually is for rent or sale; or (iv) signs used by a Builder to advertise the Property during the construction and sales period, each of which shall, in any event, comply with all statutes, laws or ordinances governing same. The Board of Directors or its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or otherwise in connection with such removal.

(l) The drying of clothes in public view is prohibited.

(m) Wood used for fireplace, barbeque, or other use must be stacked neatly and screened from public view. The Owner is responsible for ensuring that such wood stack is kept free of rodents.

(ii) No Owner shall perform, fail to perform, or permit anything to be done or not done on such Owner's Lot which would violate any laws, statutes, ordinances or regulations of any kind or character.

Section 2.6 Minimum Floor Area.

The total air-conditioned living area of the main residential structure constructed on each Lot, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall in accordance with the City of McKinney Zoning and Subdivision Regulations but in no event shall be less than 1,500 square feet for a fifty foot wide lot and not less than 1,800 square feet for a sixty foot wide lot.

Section 2.7 Fences and Walls.

Any fence or wall must be constructed of masonry, brick, wood, or other material approved by the Declarant or the ACC. No chain link fences are permitted except on the Common Properties or any school property. No fence or wall shall be permitted to extend nearer to any street than the front of any residence. However, all side yard fencing on corner Lots shall run parallel to the curb and may be placed no nearer than five feet (5') inside the side Lot line and shall not extend beyond a point of five feet (5') behind the front of the residence on that side. Fences or walls erected by Declarant shall become the property of the Owner of the Lot on which the same are erected and as such shall be maintained and repaired by such Owner except as is provided in Article IV and Article IX. Any fence or portion thereof that faces a public street shall be so constructed so that all structural members and posts will be on the side of the fence facing away from the street so that they are not visible from any street. No portion of any fence shall extend more than six feet (6') in height.

Section 2.8 Building Materials.

The building materials to be used for each residence and other structure must conform to the requirements set out in the Design Guidelines. Allowed roofing materials shall be set forth exclusively in the Design Guidelines. The color of roofing shall be consistent throughout Prestwyck and shall otherwise conform to the Design Guidelines.

Section 2.9 Mailboxes and Address Blocks.

Mailboxes shall be standardized throughout Prestwyck and shall be constructed in accordance with the Design Guidelines. An address block shall be installed on the front facade or mailbox of each residence.

Section 2.10 Landscaping.

Each Builder of a residence upon each Lot shall, upon or before the first occupancy of a house, sod grass in the front and sideyards, plant the minimum size and number of trees and minimum size and number of shrubs in the front yard against the foundation of the house as required by either the Design Guidelines or the Street Tree Guidelines. Thereafter, each Owner

of a Lot shall have the responsibility to properly maintain such trees and landscaping and, if necessary, shall replace such trees or landscaping in accordance with the Design Guidelines and Street Tree Guidelines. The Declarant and/or the Association shall have the right but not the obligation, to be exercised at its sole option, to remove and replace dead trees and landscaping and charge the costs thereof to the Owner's account as a special individual assessment under Section 10.7 below.

Section 2.11 Design Guidelines and Street Tree Guidelines.

In addition to any requirements set forth in this Declaration, all Owners are required to comply with the Design Guidelines and Street Tree Guidelines in the construction of improvements within the Property and the installation, maintenance and replacement of trees and landscaping within the Property.

ARTICLE III  
ARCHITECTURAL CONTROL

Section 3.1 Review Authority.

(a) General. Declarant and the Association will, in all likelihood engage the services of third-party professionals including architects, engineers, or other persons to perform and administer the submission, review and inspection process which may be required or necessary under this Article. Declarant reserves the right to implement and enforce additional application, permitting, review, testing and inspection requirements and procedures not contained herein relating to national or uniform codes pertaining to building, electrical, plumbing and any other aspect of construction or development as deemed necessary by Declarant.

(b) Declarant. Declarant shall have exclusive authority to administer, review and act upon all applications for architectural and other improvements within the Property until all planned Lots have been conveyed to persons other than Declarant or a Builder and have been improved with a dwelling for which a certificate of occupancy has been issued, unless Declarant earlier terminates its rights in a recorded instrument. Declarant may designate or engage one or more persons or entities to act on its behalf with respect to some or all matters coming within the purview of this Article III. In reviewing and acting upon any request for approval, Declarant or its designee act solely in Declarant's interest and owe no duty to any other person. Declarant is not required to hold meetings or keep minutes relating to its review under this Article.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other person, entity or committee, including the Architectural Control Committee. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.



(c) Architectural Control Committee. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ACC, shall assume jurisdiction over architectural matters. The ACC shall consist of at least three persons. Members of the ACC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. The ACC members shall be designated, shall serve, and may be removed and replaced in the Board's discretion.

For so long as Declarant owns any portion of the Property (and unless the Declarant notifies the ACC in writing to the contrary), the ACC shall notify Declarant in writing, no less than thirteen (13) business days prior to communicating any action (*i.e.*, approval, partial approval, or disapproval) it intends to take under this Article. A copy of the application and any additional information that Declarant may require shall accompany the notice. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any ACC action; provided, Declarant's right to veto must be exercised within ten (10) business days after it receives notice of the ACC's proposed action. The party submitting the plans for approval shall not be notified of the ACC's proposed action until after Declarant's right to veto has expired.

The Board may create and appoint subcommittees of the ACC. Subcommittees may be established to preside over particular areas of review (*e.g.*, landscape plans) and shall be governed by procedures the Board or the ACC may establish. Any subcommittee's actions are subject to review and approval by Declarant, for as long as Declarant may review the ACC's decisions, and the ACC. Notwithstanding the above, neither the ACC nor Declarant shall be obligated to review all actions of any subcommittee, and the failure to take action in any instance shall not be a waiver of the right to act in the future.

Unless and until such time as Declarant delegates any of its reserved rights to the ACC or Declarant's rights under this Article expire or terminate, the Association shall have no jurisdiction over architectural matters.

(d) Reviewer. The entity having jurisdiction in a particular case, whether Declarant or its designee or the ACC, shall be referred to as the "Reviewer".

(e) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and shall require that such fees be paid in advance. If such fees or charges, including those set forth under Section 3.3 below, are not paid in advance, the Reviewer shall have no obligation whatsoever to review any such related application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board may include the compensation of such persons in the Association's annual operating budget.

Section 3.2 Review Requirements.

No building, wall, pool or other structure (except fences) shall be commenced, erected, installed, placed, or substantially altered on any Lot, nor shall any exterior painting (other than repainting a structure the same or similar color) of, exterior addition to, or substantial alteration of, such items be made until all plans and specifications and a plot plan have been submitted to and approved in writing by the Reviewer.

The Reviewer is authorized and empowered to consider and review any and all aspects of construction and landscaping which may, in the reasonable opinion of the Reviewer, adversely affect the living enjoyment of one (1) or more Owners or the general value of the Property.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to judicial review so long as they are made in good faith and in accordance with the required procedures.

Section 3.3 Procedure for Approval.

PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION BY ANY PERSON OR ENTITY, THE BUILDER SHALL OBTAIN FROM THE REVIEWER A BUILDING PERMIT AND SHALL PAY, IN ADVANCE, ANY RELATED INSPECTION FEES AND FEES OWING OR TO BE OWED AS DETERMINED BY THE REVIEWER. THIS REQUIREMENT NOT ONLY APPLIES TO ORIGINAL CONSTRUCTION BUT TO POOL INSTALLATIONS, MODIFICATIONS OR ADDITIONS TO EXISTING STRUCTURES OF IMPROVEMENTS. FAILURE TO OBTAIN SUCH PERMIT OR PAY SUCH FEES PRIOR TO INITIATION OF CONSTRUCTION SHALL BE CAUSE FOR THE REVIEWER OR THE ASSOCIATION TO REQUEST AND OBTAIN EMERGENCY TEMPORARY RELIEF TO RESTRAIN ALL ASPECTS OF CONSTRUCTION.

In addition to the foregoing requirement, final plans and specifications shall be submitted in duplicate by certified mail, return receipt requested or hand delivery to the Reviewer. The plans and specifications shall show the nature, kind, shape, height, materials and location of all landscaping and improvements. The application shall specify in writing any requested variances from the requirements set forth in this Declaration, the Design Guidelines, the Street Tree Guidelines or any Community-Wide Standard. The Reviewer is authorized to request the submission of samples of proposed construction materials and such other information as they reasonably deem necessary to make their determination. At such time as the plans and specifications meet the approval of the Reviewer, one complete set of plans and specifications will be retained by the Association, for up to three (3) years only, and the other complete set of plans shall be marked "Approved", signed by a representative of the Reviewer and returned to the Lot Owner or his designated representative. If disapproved by the Reviewer, one set of such plans

shall be returned marked "Disapproved" and shall be accompanied by a reasonable statement of the reasons for disapproval, which statement shall be signed by a representative of the Reviewer. Any modification of the approved set of plans and specifications must again be submitted to the Reviewer for its approval. The Reviewer's approval or disapproval, as required herein, shall be in writing. Any reliance upon a verbal approval of any plans by the Reviewer shall be wholly unjustified, at the risk of the Lot Owner and subject to any subsequent or otherwise conflicting written response by the Reviewer.

If the Reviewer fails to approve or disapprove any such plans and specifications or modification thereto within thirty (30) business days after the date of submission of all information the Reviewer requires, the submission shall be deemed to have been denied. Any Builder who is constructing residences on multiple Lots shall have the option of submitting a master set of final plans and specifications for all of the residences it intends to construct within the Property to the Reviewer in accordance with the provisions of this paragraph. Once the master set of plans has been approved, the Builder shall be allowed to construct residences in accordance with such approved plans and no further submittals shall be required unless material deviations have been made to such approved plans.

The Reviewer may, but is not obligated to, permit or require that plans be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage.

As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified time period. If construction does not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action.

Also as a part of the review process, the Reviewer may require that the construction of any improvement be inspected on a periodic basis prior to completion for compliance with the plans, codes adopted by the Declarant and other matters relating to the quality or method of construction. The Association may conduct such inspections or, in the alternative, it may contract with third parties for such purposes. The Owner on whose Lot the construction is taking place shall be responsible for the payment of costs relating to any such inspection.

#### Section 3.4 Standards.

The Reviewer shall have sole discretion with respect to taste, design and all standards specified herein. One objective of the Reviewer is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built on the Property. The Reviewer shall have the authority to interpret and amend the Design Guidelines or the Street Tree Guidelines, subject to Declarant's approval for so long as Declarant or any Builder owns any portion of the Property and,

thereafter, subject to the approval of the Board. The Reviewer may from time to time publish and promulgate bulletins regarding architectural standards, which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration.

#### Section 3.5 Requests for Variance.

Upon submission of a written narrative request for same, the Reviewer may, from time to time, in its sole discretion, permit Owners and Builders to construct, erect or install improvements which are in variance from the requirements of this Declaration or which may be contained in the Design Guidelines or the Street Tree Guidelines. In any case, however, such variances shall be in basic conformity and shall blend effectively with the general architectural style and design of the community. No member of the ACC or the Board, or the Association or Declarant shall be liable to any Owner or other person claiming by, through, or on behalf of any Owner, for any claims, causes of action, or damages arising out of the granting or denial of, or other action or failure to act upon, any variance request by any Owner or any person acting for or on behalf of any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Reviewer's right to strictly enforce the Declaration, the Design Guidelines or the Street Tree Guidelines against any other Owner. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Reviewer must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted.

#### Section 3.6 Liability of Reviewer.

Neither Declarant, the Board of Directors, the Architectural Control Committee, or any of their respective members, officers, employees, designees, contractors, administrators, inspectors and agents, shall have any liability whatsoever for decisions made in accordance with this Article so long as such decisions are made in good faith and are not arbitrary or capricious. The plans or the site plan submitted to the Reviewer shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Reviewer shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, or any codes, ordinances, regulations or other laws, whether statutory or not, and whether the same relate to Lot lines, building lines, easements or any other issue. Review and approval of any plans pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every dwelling is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

**THE ASSOCIATION HEREBY UNCONDITIONALLY AND PERPETUALLY INDEMNIFIES AND HOLDS DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, AND THEIR RESPECTIVE MEMBERS, EMPLOYEES, DESIGNEES, ADMINISTRATORS, INSPECTORS, CONTRACTORS, AND AGENTS HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, LOSS, DAMAGE,**

**COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF ANY ACTIONS OR INACTIONS TAKEN HEREUNDER BY THE REVIEWER, IRRESPECTIVE OF WHETHER OR NOT THE REVIEWER, ITS EMPLOYEES, CONTRACTORS, AGENTS AND OTHER INDIVIDUALS OR ENTITIES TO OR EMPLOYED BY THE REVIEWER ACTED NEGLIGENTLY OR WITH WILLFUL MISCONDUCT.**

Section 3.7 Special Rights of Declarant.

Notwithstanding anything to the contrary contained herein, any Lot owned by Declarant or its successor or assign, shall not be subject to the provisions of this Article III and Declarant shall not be required to submit plans and specifications, etc. to the Architectural Control Committee nor obtain the consent, permission or approval of the Architectural Control Committee for the matters otherwise required pursuant to this Article III, and the consent, permission or approval of the Architectural Control Committee shall be deemed given for plans and specifications, plot plans and the like to be used by Declarant, or Declarant's assigns, in the construction of any residence on any Lot owned or sold to a Builder by Declarant. **DECLARANT ALSO RETAINS SPECIAL AND UNIQUE RIGHTS AND PRIVILEGES IN ARTICLE XII THAT TAKE PRECEDENCE OVER ALL OTHER ARTICLES OR SECTIONS IN THIS DECLARATION.**

**ARTICLE IV  
SPECIAL FENCING AND LANDSCAPING**

Section 4.1 Fences, Walls and Screening Landscaping.

Declarant and/or the Association shall have the right, but not the obligation, to erect, install, maintain, repair and/or replace fences, walls and/or screening landscaping within that portion of any Lot situated along the perimeter of the Property or on Lots adjacent to Common Properties, as shown on a Final Plat. Any such fence, wall or sprinkler system shall be the property of the Owner of the Lot on which such fence, wall or sprinkler system is erected or installed, subject to the easements and rights of Declarant and the Association set forth below. With respect to any fencing installed within a Lot that is adjacent to a thoroughfare, the Association shall have the exclusive right to stain the exterior of such fence facing the thoroughfare whenever, in the Board's sole and absolute discretion, it deems necessary. The Design Guidelines shall contain all construction and materials requirements for the walls adjacent to the Common Properties and any thoroughfare.

Section 4.2 Landscaping.

Declarant and/or the Association shall have the right to grade, plant and/or landscape and maintain, repair, replace and/or change such grading, planting and landscaping on any portion of the Property not comprising any portion of a Lot and, without limitation whatsoever, to do all things necessary within the Property to obtain full compliance with the Street Tree Guidelines.

Section 4.3 Easement.

Declarant and the Association shall have, and hereby reserve, the right and easement to enter upon the Common Properties and those Lots which are situated along the perimeter of the Property and/or the Common Properties, as shown on a Final Plat, or the Lots adjacent to a thoroughfare, for the purpose of exercising the discretionary rights set forth in this Article IV.

Section 4.4 Declarant's and the Association's Discretion.

Notwithstanding any provisions herein to the contrary, neither Declarant nor the Association shall ever be obligated to erect, install, maintain, repair or replace any fences, walls, sprinkler systems, grading, planting or landscaping on the Property.

Section 4.5 Fifteen (15) Year Limitation.

The provisions of this Article IV regarding Declarant's rights shall terminate and be of no further force and effect from and after that date which is fifteen (15) years after the recording of this Declaration. The rights of the Association shall continue throughout the term hereof.

**ARTICLE V  
LOT MAINTENANCE BY OWNERS**

Section 5.1 Lot Maintenance.

After the installation of the landscaping on a Lot by a builder, the Owner of the Lot shall thereafter maintain the yard in a sanitary and attractive manner, including adequate watering and immediate replacement of dead vegetation and trees, and shall edge the street curbs that run along the Lot boundary lines. Yards must be kept mowed and trimmed at regular intervals so as to maintain the Lot in a neat and attractive manner. No vegetables shall be grown in any portion of a Lot yard that faces a street or is not screened by fencing built in accordance with the terms hereof. Grass shall not be permitted to grow to a height of greater than six inches (6") upon any Lot.

Section 5.2 Maintenance of Improvements.

Each Owner shall maintain the exterior of all buildings, fences, walls and other improvements on his Lot in good condition and repair, and shall replace worn and rotten parts, and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, down spouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate in an unattractive manner. All fences shall be kept neat, clean and in good repair. Any fence which is damaged, leaning, or otherwise not in good repair shall be immediately repaired.

**ARTICLE VI  
ENFORCEMENT**

**Section 6.1 Special Enforcement Rights of the Board of the Association.**

In the event an Owner fails to comply with any provision of this Declaration, the Design Guidelines or the Street Tree Guidelines, including but not limited to any requirement contained in Article V, then, prior to the Board or the Association enforcing the compliance of such failure or seeking against such Owner remedies in accordance with this Declaration (or such other remedies as may be available to the Board and/or the Association at law or in equity), the Board shall first be obligated to give such Owner notice of such failure and a reasonable time, as determined by the Board, after the date of such notice in which to cure such violation or failure. If the Owner shall not have corrected such failure within such reasonable time after the giving of such notice, the Board of Directors shall have the right but not the obligation, to assess monetary fines and enter upon the Lot and to bring the Lot, and any improvements thereon, into full compliance with this Declaration, the Design Guidelines or the Street Tree Guidelines. All costs and expenses incurred by the Association in connection with correcting any such failure shall be borne by the Owner. If any Owner does not promptly reimburse the Association for all such costs, expenses and violation fines assessed after receipt of written request for same, the Board shall have the right to assess the Owner for same plus interest, such assessment, interest and fines being a special individual assessment under the provisions of Section 10.6 below.

**Section 6.2 Enforcement.**

In addition to but not in lieu of the enforcement rights set forth in Section 6.1, the Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with the applicable procedures set forth in any policy or procedure adopted by the Board. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

(a) Fines. The Board of Directors may impose reasonable monetary fines which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest, or invitee of the Owner of such Lot.

(b) Suspension of Rights to Use the Common Properties. The Board of Directors may suspend any person's or entity's right to use any recreational facilities within the Common Properties; provided, however, nothing herein shall authorize the Board of Directors to limit ingress or egress to or from a Lot.

(c) Right to Require Removal. The Board of Directors may require an Owner, at the Owner's expense, to remove any dead tree or landscaping from an Owner's Lot which does not comply with the Street Tree Guidelines and to restore or install the necessary trees or landscaping as required by the Street Tree Guidelines and, upon failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the Lot, remove and cure the violation without

such action being deemed a trespass and charge the costs thereof to the Owner's account as a special individual assessment in accordance with Section 10.6 below.

(f) Levy Special Individual Assessment. The Board of Directors may levy a special individual assessment in accordance with Section 10.6 as a violation fine and/or to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration or the Design Guidelines.

(g) Lawsuit, Injunction or Damages. The Board of Directors may bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

Failure by Declarant or the Board of Directors, to enforce any covenant, condition, agreement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to the Association's enforcement rights, this Declaration may be enforced by any aggrieved Owner.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

## ARTICLE VII AMENDMENT AND TERMINATION

### Section 7.1 Amendment

This Declaration may be amended by Declarant at any time within five (5) years from the date this Declaration is filed of record with the office of the County Clerk. Within such five (5) year period, Declarant may amend the Declaration for any reason without the consent or joinder of any party or without the need to call a meeting of the Association. In addition to the foregoing, the Declaration may be amended by an instrument containing such amendment(s) and recorded in the Official Public Records of the County, provided, that (i) during the period Declarant owns at least one Lot, no such amendment shall be valid or effective without the joinder and consent of Declarant and (ii) such amendment shall first be approved by the affirmative vote or written consent of the Association's Members representing at least 67% of the votes in the Association voting, in person or by proxy, at a duly convened meeting of the Association. Furthermore, Declarant or the Board may, at its sole discretion and without a vote or the consent of any other party, modify, amend, or repeal this Declaration: (i) as necessary to bring any provision into compliance with any applicable statute, governmental rule, regulation, or judicial determination; (ii) as necessary to comply with the requirements of VA, or HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency or secondary



mortgage market entity; or (iii) as necessary for clarification or to correct technical, typographical or scrivener's errors; provided, however, any amendment pursuant to clause (ii) and/or (iii) immediately above must not have a material adverse effect upon any right of any Owner. Any amendment to this Declaration must be recorded in the Real Property Records of the County.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class B Member without the written consent of Declarant or the Class B Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment to this Declaration that alters or modifies the Association's obligations to maintain the (a) Common Properties or (b) any landscaping, buffering, screening, irrigation and associated improvements adjacent to the Property along public thoroughfares ("Improvements") must be approved in writing by the City of McKinney, Texas. No amendment may remove, revoke, or modify any paragraph or provision contained in the Declaration regarding the right, privilege, power and/or authority of the City of McKinney, Texas, to exercise the powers of the Declarant or Association if the Association defaults in its maintenance obligations under Section 142-107 of the Code of Ordinances, City of McKinney, Texas, as such provision now exists or may hereafter be amended.

#### Section 7.2 Termination.

At any time, the Owners may terminate and extinguish this Declaration in its entirety by executing an instrument terminating this Declaration and recording same in the Official Public Records of the County, provided, however, that (i) for the period in which Declarant owns at least one Lot, no such termination shall be valid or effective without the joinder and consent of Declarant and (ii) such termination and extinguishment shall first be approved by the affirmative vote or written consent of the Association's Members representing at least 75% of the votes in the Association. Prior to the effective date of any such termination, the Association shall provide for the continuous maintenance and control of the Common Properties and Improvements by a responsible body, in perpetuity, for the benefit of the owners of lots within the Property without using public funds.

### ARTICLE VIII MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

#### Section 8.1 Membership.

Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to each Lot and may not be separated from ownership of any Lot which is subject to assessment hereunder.

#### Section 8.2 Classes of Membership.

The Association shall have two (2) classes of voting membership:

**CLASS A.** Class A Members shall all be Members with the exception of the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership; provided, however, that in the event that more than one (1) person holds such interest or interests in any Lot, even though all such persons shall be Members, there shall be only one (1) vote for such Lot, which shall be exercised as they, among themselves, determine (but in no event shall more than one (1) vote be cast with respect to any such Lot).

**CLASS B.** The Class B Member(s) shall be Declarant. Until such time as 75% of the maximum number of Lots planned or approved for the Property have been conveyed to Class A Members other than Builders who purchase Lots for development and sale, the Class B Member shall have the sole right to appoint the Board of Directors of the Association. The Declarant's right to appoint Directors to the Board is limited by the following: (i) so long as Beazer owns one Lot, at least one Director shall be designated by Beazer, (ii) so long as Lennar owns one Lot, at least one Director shall be designated by Lennar, and (iii) so long as First Texas owns a Lot, at least one Director shall be designated by First Texas. Control of the Association shall be vested in the Class A Members only after title to 75% of the maximum number of Lots planned or approved for the Property has been transferred to Class A Members other than Builders who purchase Lots for development and sale. The Class B Member shall have three (3) votes for each Lot it owns until such time as control of the Association vests in the Class A Members. After such time, the Class B Member shall be a Class A Member entitled to one (1) vote for each Lot it owns.

**Section 8.3 Quorum and Notice Requirements.**

8.3.1. Except as expressly provided herein to the contrary, any action of the Members shall require the assent of a majority of the votes of those Association Members who are present at a meeting, in person or by proxy, written notice of which shall be given to all Members not less than ten (10) days nor more than forty-five (45) days in advance of such meeting.

8.3.2. A quorum is required for any action referred to in Section 8.3.1 and, unless otherwise provided, for any action for which a percentage vote at a meeting is required. A quorum shall be determined as set forth in this Section 8.3.2. The first time a meeting is called, whether regular or special, the presence at the meeting of Members, or of proxies, entitled to cast at least thirty (30%) of all of the votes of the Association's Members, without regard to class, shall constitute a quorum. If the required quorum is not present at the initial meeting, additional meetings may be called, subject to the notice requirement hereinabove set forth, and the required quorum at such subsequent meeting(s) shall be two-thirds (2/3rds) of the quorum requirement for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum (although the quorum requirement shall be reduced for each such meeting, in no event shall a quorum be less than one-tenth (1/10) of the votes of the Association). At such adjourned or subsequent meeting at which a quorum shall be present or represented, any business may be transacted which may have been transacted at the meeting as originally notified.

8.3.3. Except as specifically set forth in this Declaration, notice, voting and quorum requirements of any action to be taken by the Association shall be set forth in its Bylaws, as same may be amended from time to time.

Section 8.4 Right of Inspection.

Each Owner shall have the right to inspect the financial records and books of the Association, during normal business hours and at the place where such books are kept, upon reasonable prior written notice to the Association stating a proper purpose in accordance with Section 209.005 of the Texas Property Code, as amended.

**ARTICLE IX  
THE COMMON PROPERTIES**

Section 9.1 Initial Common Properties.

The Common Properties may include but are not limited to, and by way of illustration only, all aspects of the entry features, entry monuments and walls, landscaping, irrigation for same and the land on which such entry features are situated, retention ponds, screening walls, pocket parks, a clubhouse and associated recreational amenity, gates, fences, fountains and other structures, whether or not shown on a Final Plat, or as deemed necessary by Declarant, each as may be leased, maintained or owned by the Association. The foregoing list is intended to illustrate examples of Common Properties and under no circumstance shall such list impose any obligation on the Declarant or the Association to purchase, install or construct any such features or amenities. The Common Properties may hereafter include any neighborhood parks or other improvements or land conveyed to or leased by the Association for the use and benefit of the Owners.

Section 9.2 Additional Common Properties.

Additional property may be added to the Common Properties hereunder upon the sole discretion of Declarant during such time as Declarant owns at least one (1) Lot. Thereafter, additional property may be added to the Common Properties hereunder upon the affirmative vote of sixty percent (60%) of the votes of those Association Members who are voting, in person or by proxy, at a meeting duly called for such purpose.

Section 9.3 Acceptance and Control of Common Properties.

Declarant, or any third-party at the request of Declarant, may transfer to the Association, and the Association shall accept as Common Properties, personal property and/or fee title or other property interests in any improved or unimproved real property included within the property described in Exhibit A or any other real property made subject to this Declaration in the future. Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved real property originally conveyed to the Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

Section 9.4 Extent of Members' Easement in the Common Properties.

Each Member shall have a right and easement of access, use and enjoyment in and to the Common Properties which is subject to the following:

9.4.1 The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties;

9.4.2 The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

9.4.3 The right of the Association to suspend the right of any individual to use any of the Common Properties and/or common facilities for any period during which any assessment against a Lot resided upon or owned by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of the rules and regulations of the Association, the Declaration, the Design Guidelines, or the Street Tree Guidelines; and

9.4.4 The right of the Association to charge reasonable admission and other fees for the use of recreational facilities on the Common Properties, if any such recreational facilities are ever constructed.

Section 9.5 Dedication of the Common Properties.

The Board of Directors shall have the right at any time to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and upon such conditions as the Board of Directors may determine.

**ARTICLE X  
COVENANT FOR ASSESSMENTS**

Section 10.1 Creation of the Lien and Personal Obligation of Assessments.

Each Owner hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association) the following: (a) annual assessments or charges; (b) acquisition assessments; (c) special assessments for capital improvements; (d) individual special assessments (including, without limitation interest and fines) levied against individual Owners for violations of the Declaration, Design Guidelines, the Street Tree Guidelines or the Community-Wide Standard or to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner, his tenant(s) occupying his Lot, if applicable, and their respective family, agents, guests and invitees, or for costs incurred by the Association resulting from any Owner failing to comply with the terms and provisions hereof. All such assessments shall be fixed, established and collected as hereinafter provided.

The annual, acquisition, benefitted, special capital, and individual special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with late charges, collection costs, such interest thereon and cost of collection thereof, including attorneys' fees, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Fines, not to exceed \$100.00 per day, shall be assessed upon the expiration of a reasonable time after the date notice of such violation was sent to the violating Owner. In all instances of violations, the Owner shall be responsible for correcting such violation within a reasonable time after the date of such notice, regardless as to whether the residence is occupied by the Owner or a tenant. The lien provided for herein shall secure payment of fines not timely paid and the Owner shall also have personal liability for the payment of same.

#### Section 10.2 Purpose of Assessments.

The assessments levied by the Association shall be used as follows: (a) for the purpose of promoting the interests of the Association and the recreation, health and welfare of the residents of the Property, and in particular for the improvement and maintenance of the entry ways or any other properties, services and facilities devoted to this purpose and comprising or directly relating to the use and enjoyment of the Common Properties, including, but not limited, to the payment of taxes on and insurance in connection with the Common Properties, and the repair, replacement and additions thereto; (b) for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article XI hereafter including, but not limited to, the payment by the Association of all assessments and charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting (if any) of the Common Properties; (d) for paying the cost of maintenance of the monument sign for the Property, if any, in the event the appropriate governmental authority refuses to maintain the same; or (e) for carrying out the purposes of the Association as stated in its Articles of Incorporation.

#### Section 10.3 Basis and Amount of Annual Assessments.

10.3.1 The Board of Directors may fix the annual assessment at any amount equal to or less than the maximum annual assessment for that year, as herein below provided. The maximum annual assessment for each Lot for the year 2012 shall be Four Hundred Eighty and No/100 Dollars (\$480.00). Commencing with the year 2012 and each year thereafter, the Board of Directors may set the amount of the maximum annual assessment for that year (and for following years) for each Lot provided that the maximum annual assessment may not be increased more than twenty percent (20%) above the maximum annual assessment for the previous year without a vote of the membership taken in accordance with the provisions of Section 10.3.2.

10.3.2 Commencing with the year 2012, and in each year thereafter, the Board of Directors may set the maximum annual assessment for the following year for each Lot at an amount more than twenty percent (20%) above the maximum annual assessment for the previous year; provided that any such increased assessment shall be approved by the affirmative vote of sixty percent (60%) of the votes of those Association Members who are voting, in person or by proxy, at a meeting duly called for such purpose.

**Section 10.4 Acquisition Assessments.**

At any time record title is transferred to a new Owner (excluding a Builder), an acquisition assessment shall be paid to the Association by such new Owner at closing in the amount of Two Hundred Fifty And No/100 Dollars (\$250.00) for each Lot acquired. Acquisition assessments shall be in addition to, not in lieu of, any other assessment provided for herein. Acquisition assessments are not refundable and shall be available for all necessary expenditures of the Association as determined by the Board. In addition to the foregoing but still considered an assessment hereunder, the Association or its managing agent may charge a reasonable transfer fee and a reasonable fee for producing a Resale Certificate and documents of the Association as required under the Texas Property Code, such fees to be paid no later than closing of the sale of any Lot to a new Owner.

**Section 10.5 Special Assessments.**

The Association may also levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, maintenance, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto; provided that any such assessment shall be approved by the affirmative vote of sixty percent (60%) of the votes of those Association Members who are voting, in person or by proxy, at a meeting duly called for such purpose.

**Section 10.6 Special Individual Assessments, Interest and Fines.**

In the event that any Owner fails to comply with the provisions of this Declaration, the Design Guidelines, the Street Tree Guidelines or the Community-Wide Standard and/or the Association incurs any cost or expense in either enforcing said provisions against any such Owner or in carrying out the obligations of any such Owner, the Association shall have the right to assess against such Owner and the Lot of such Owner a special individual assessment in the amount of all such costs incurred by the Association plus interest and/or in the amount of any violation fine(s) levied by the Board. Special individual assessment, interest and fines to be paid by the applicable Owner upon demand by the Association.

**Section 10.7 Uniform Rate of Assessments.**

Both annual and special assessments (excepting therefrom special individual assessments) shall be fixed at a uniform rate for all Lots.

Section 10.8 Date of Commencement and Due Dates of Assessments.

The obligation to pay assessments commences as to each Lot: (a) upon acquisition of record title to a Lot by the first Owner thereof other than Declarant; or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The initial annual assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot. Annual assessments shall be payable in advance on the first (1st) business day of each January; provided, if the Board so elects, annual assessments may be paid in monthly, quarterly, or semi-annual installments. The Board may require advance payment of all or any portion of the annual assessment at closing of the transfer of title to a Lot. The due date or dates, if it is to be paid in installments, of any special assessment under Section 10.5 shall be fixed in the respective resolution authorizing such assessment.

Section 10.9 Duties of the Board of Directors with Respect to Assessments.

10.9.1 The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

10.9.2 Only if such assessment is an amount different from that charged for the previous year, written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto (according to the Association's then current records).

10.9.3 The Board of Directors shall, upon demand, cause to be furnished to any Owner liable for said assessments a certificate in writing signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board or the Association's managing agent for the issuance of such certificates.

Section 10.10 Assessment Lien to Secure Charges and Assessments.

All assessments, interest, late charges, collection fees and attorneys' fees, as provided for herein, shall constitute and be secured by a separate and valid and subsisting assessment lien, hereby created and fixed, and which shall exist upon and against each Lot and all improvements and fixtures thereon, for the benefit of the Association. Notwithstanding any other provision hereof, the lien to secure the payment of assessments or any other sums due hereunder and any other lien which the Association may have on any Lot pursuant to this Declaration shall be subordinate to the lien or equivalent security interest of any first lien mortgage or deed of trust on any Lot. Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the liens securing maintenance charges or assessments or any other sums due hereunder which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due

and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future assessments or charges be affected in any manner.

Section 10.11 Effect of Nonpayment of Assessment.

If any assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the highest nonusurious rate allowed under the laws of the State of Texas, or other applicable law, or if no such limitation imposed then at the rate of fifteen percent (15%) per annum, and if placed in the hands of an attorney for collection or if collected through probate or other judicial proceedings, there shall be reimbursed to the Association its reasonable attorneys' fees. Should any assessment provided for herein be payable in installments, the Association may accelerate the entire assessment and demand immediate payment thereof. In addition, a late charge shall be assessed against the non-paying Owner for each month that any assessment remains unpaid. The late charge shall be in the amount of Twenty-Five And No/100 Dollars (\$25.00) per month and shall serve to reimburse the Association for administrative expenses and time involved in collecting and processing delinquent assessments. The Association's managing agent shall be entitled to charge an Owner a monthly collection fee to compensate managing agent for its efforts in collecting delinquent assessments. The Association, in the Board's discretion, shall have the right to waive any part of or all of such interest and/or fees.

Section 10.12 Collection and Enforcement.

The Association shall have a lien on each Lot securing payment of any assessment, together with interest thereon as provided herein, reasonable attorneys' fees, late charges, collection fees and costs incurred in the collection of same and the enforcement of said lien. The Board of Directors shall take such action as it deems necessary to collect assessments and may settle and compromise the same if deemed appropriate in the exercise of the Board's business judgment. Such liens shall be effective as and in the manner provided for herein and shall have the priorities established in this Declaration.

The Board of Directors may bring an action at law against any Owner personally obligated to pay an assessment or foreclose the lien against such Owner's Lot, or both, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Board of Directors of the Association or its agent the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including, but not limited to, nonjudicial foreclosure pursuant to Texas Property Code Section 51.002 in force and effect on the date of this Declaration, or in accordance with the prescribed manner for foreclosure of deed of trust liens provided by any future amendment to such Section 51.002 or any other statute or article enacted in substitution therefor, and such Owner hereby expressly grants to the Board of Directors a private power of sale in connection with said lien. The Board is hereby appointed trustee, unless and until the Board of Directors shall designate a substitute or successor trustee, as hereinafter provided, to post the required notices as provided by law and conduct such foreclosure sale. The



lien provided for in this Section shall be in favor of the Association and shall have the same effect as though each Owner had expressly granted to the Association a deed of trust lien as well as a security interest in said Lot to secure the payment of the assessments provided for herein. In addition to such notices as required by the aforesaid statute, the trustee shall mail to the Owner of a Lot for which the assessment has not been paid, a copy of the notice of assessment lien prior to the date any notice of sale is posted, by certified, return receipt requested, at the Lot or such other address as the Board has been advised in writing for receipt of notices under this Declaration.

At any foreclosure, judicial or nonjudicial, the Association shall be entitled to bid up to the amount of its lien, together with costs and attorneys' fees, and to apply as a cash credit against its bid all sums due the Association covered by the lien foreclosed. All foreclosure sales provided for herein shall be subject to any then existing statutory right of redemption in favor of the former Owner. From and after any such foreclosure, the former Owner or Owners, their heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the purchaser at such sale, and in the event of their failure to surrender possession of said property upon demand, the purchaser, or his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such Lot, or any part thereof, is situated. The Board of Directors in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act in the place of the trustee without any formality other than the designation in writing of a substitute or successor trustee; and the authority hereby conferred by the Board of Directors shall extend to the appointment of other successor and substitute trustees successively until the delinquent assessment or assessments have been paid in full, or until said property is sold, and each substitute and successor trustee shall succeed to all the rights and powers of the original trustee appointed by the Board of Directors or its agents.

#### Section 10.13 Homestead.

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

#### Section 10.14 Omission of Assessments.

The omission of the Board of Directors, before the expiration of any assessment period, to fix the assessments hereunder for that or the next assessment period, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent assessment period, but the assessment fixed for the preceding assessment period shall continue until a new assessment is fixed or levied by the Board.

Section 10.15 Maintenance Fund; Working Capital Fund.

10.15.1 The Association may, but is not obligated to, establish and maintain a maintenance fund for the periodic maintenance of the Common Properties. Subject to the provisions of Section 10.3 above, the Board may at any time ratably increase or decrease the amounts of regular annual assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including provisions for reasonable reserves. So long as the Board exercises business judgment in determining the amount or necessity of the reserve fund, the amount held in reserves shall be considered adequate.

10.15.2 The Association may establish a working capital fund for the initial operation of the Common Properties in such amount as the Board shall determine.

Section 10.16 Exempt Property.

The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

10.16.1 All properties dedicated and accepted by the local public authority and devoted to public use; and

10.16.2 All Common Properties.

Section 10.17 Declarant Subsidy.

Declarant may, but shall not be obligated to, pay a subsidy to the Association (in addition to any amounts paid by Declarant under Section 10.18 below) in order to reduce the total annual assessment which would otherwise be necessary to be levied against all Lots to cover the estimated expenses of the Association (including reserve contributions, if any). Any such subsidy shall be disclosed as a line item in the income portion of the budget. The subsidy may be treated by the Declarant, in its sole discretion, as a loan from the Declarant to the Association or as an advance against future assessments due or as a contribution.

Section 10.18 Declarant's Assessment.

Notwithstanding any provision of this Declaration or the Articles of Incorporation or Bylaws to the contrary, so long as there is Class B membership in the Association, the Declarant may, on an annual basis, elect either to pay annual assessments on its unsold Lots or pay the difference between: (a) the Association's operating expenses otherwise to be funded by annual assessments (after applying all income received by the Association from other sources); and (b) the sum of the revenues of the Association from all sources. Upon ninety (90) days notice to the Association, the Declarant may change its election hereunder during the fiscal year. "All sources" includes, but is not limited to, revenues from the operation of Common Properties, capital contributions, accounting service fees, property management fees, guest fees, user fees, and the assessments levied against the owners of Lots, other than the Declarant. Such difference, herein

called the "deficiency", shall not include any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or special assessments, and Declarant shall not be responsible, in any event, for any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or special assessments. Any sums paid by the Declarant to the Association to fund the "deficiency" or any sums paid by the Declarant to the Association in excess of the annual assessment otherwise due on the Declarant's unsold Lots may be considered by the Declarant to be the payment of a subsidy to the Association pursuant to Section 10.17 of this Article. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" consideration of services or materials, or by a combination of these. After termination of the Class B membership, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

**ARTICLE XI  
GENERAL POWERS OF THE  
BOARD OF DIRECTORS OF THE ASSOCIATION**

**Section 11.1 Power and Duties.**

Except as provided in Article XII below, the Board, for the benefit of the Association, the Property and the Owners, shall have the right to do all things which are necessary or advisable in connection with enforcing the provisions of this Declaration. Such powers shall include, but shall not be limited to, the following:

11.1.1 Paying assessments and charges for sewer, water and garbage pickup services for the Properties, if any, the installation and maintenance charges for street lighting for the Property, if any, and taxes, assessments and other charges which shall properly be assessed or charged against the Common Properties.

11.1.2 Performing maintenance on the Common Properties which may include, without limitation, the following: (a) maintenance of any driveways, private roadways, jogging paths, walkways and sidewalks; (b) maintenance of grounds, including care of trees, shrubs and grass, lighting systems, sprinkler systems (if installed) and similar facilities on the Common Properties; and (c) maintenance of the entry monument(s) and any screening walls or fences constructed around the perimeter of the Property; provided, further, that in the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family, his guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

11.1.3 Managing and maintaining the Common Properties and full maintenance of a utility service for the Common Properties; the furnishing and upkeep of any desired personal property for use in the Common Properties.

11.1.4 Purchasing a policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association, in an amount not less than \$250,000.00 to indemnify

against the claim of one person, \$500,000.00 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$50,000.00 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insureds; provided, that under no circumstances shall the Board be authorized to provide or pay for fire, casualty, or other insurance insuring the interest of any Owner in his Lot.

11.1.5 Executing all replats of the Property and all declarations of ownership for tax assessment purposes with regard to the Common Properties on behalf of all Owners.

11.1.6 Borrowing funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

11.1.7 Entering into contracts, maintaining one or more bank accounts, and generally exercising all the powers necessary or incidental to the operation and management of the Association, expressly including the power to enter into management and maintenance contracts.

11.1.8 Protecting or defending the Common Properties from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

11.1.9 Making reasonable rules and regulations for the operation of the Common Properties and amend them from time to time, provided that any rule or regulation may be amended or repealed by the vote of at least sixty percent (60%) of those Members present, in person or by proxy, at a meeting called for such purpose (without limiting the generality of the foregoing language, the rules and regulations may provide for limitations on use of the Common Properties during certain periods by youthful persons, visitors or otherwise).

11.1.10 Adjusting the amount, collecting and using any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, assessing the Members in proportionate amounts to cover the deficiency.

11.1.11 Enforcing the provisions of this Declaration, the Design Guidelines, any Community-Wide Standard, and any rules made hereunder, and to enjoining and seeking damages from any Owner for violation of such provisions or rules.

11.1.12 Exercising the rights granted to the Association in this Declaration, including, without limitation, all rights of the Board, the Association, and the ACC relating to architecture, design, and construction review and inspections under Article III.

The Association may exercise any right or privilege given to it expressly or by reasonable implication by this Declaration, the Bylaws, or the Articles of Incorporation, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically

provided in such documents or by law, all of the Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Properties, enforcement of this Declaration, or any other civil claim or action. However, the Board shall exercise business judgment in determining whether to take any such action under particular circumstance and shall have no legal duty to institute litigation under any circumstances on behalf of or in the name of the Association or the Members.

Section 11.2 Board Power, Exclusive.

The Board shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the maintenance fund, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

Section 11.3 Owner's Obligations to Repair.

Except for those portions of each Lot constituting the Common Properties, each Owner shall at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair. In the event that any Owner shall fail to maintain and repair his Lot and such improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right but not the obligation, subject to the notice and cure provisions of Section 6.1 above, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessments hereunder when due.

Section 11.4 Maintenance Contracts with Owners.

The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by or for the Association of services pursuant to the terms hereof (including, but not limited to, the maintenance and repair of fences owned by any such Owner), such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and to the best interest of the Association; provided, however, that same must be commercially reasonable in all circumstances.

Section 11.5 Liability of the Board of Directors.

The Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding if approved by the Board of Directors at the time of such settlement) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

**OFFICERS, DIRECTORS, AND COMMITTEE MEMBERS SHALL NOT BE LIABLE FOR ANY MISTAKE OF JUDGMENT, NEGLIGENCE OR OTHERWISE, EXCEPT FOR THEIR OWN INDIVIDUAL WILLFUL MISFEASANCE, MALFEASANCE, MISCONDUCT, OR BAD FAITH.** The Association's officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association. The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as an Association expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 11.6 Notice and Hearing Procedures Prior to the Initiation of Certain Types of Actions by the Association.

Except as set forth in paragraph (c) below, prior to filing suit to enforce the provisions of this Declaration, the Design Guidelines, the Street Tree Guidelines, any Community-Wide Standard or rules promulgated hereunder, the Association shall comply with the notice and hearing procedures set forth in subsections (a) and (b) below.

(a) Notice. The Association shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the action which the Association proposes or intends to take unless the violation is corrected within a reasonable time after the date of the written notice, and (iii) a period of not less than thirty (30) calendar days within which the alleged violation may present a written request for a hearing. If a timely request for a hearing is not made within the thirty (30) day period, the Association may proceed with the action. If the violation is abated within the time period set forth in the written notice, the Association shall suspend the proposed action unless a similar violation occurs within six (6) months from the date of the written notice. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Owner.

(b) Hearing. If a hearing is requested within the allotted thirty (30) day period, the hearing shall be held before a committee appointed by the Board consisting of three (3) persons, all of whom shall be Owners or Residents of Prestwyck or representatives of the Declarant. A representative of the Association shall be afforded a reasonable opportunity to make a statement describing the alleged violation and to present any evidence or witnesses to support its statement. The alleged violator shall also be afforded a reasonable opportunity to be heard and to present any

evidence or witnesses on his or her behalf. At the conclusion of all statements and presentations, the committee may close the hearing and retire to discuss the evidence and to render a judgment as to whether, in fact, a violation has occurred. The committee shall notify the Association and the alleged violator in writing of its determination within five (5) days after the hearing. If the committee determines that a violation has occurred, the Association may pursue any and all remedies described in its original notice of the violation. The alleged violator shall have the opportunity to appeal the decision of the committee to the Board in accordance with Section 209.007 of the Texas Residential Property Owners Act, Texas Property Code, as it may be amended.

(c) Applicability. The notice and hearing procedures set forth in this Section shall not apply to any claim: (i) upon which the Board deems it necessary to obtain emergency injunctive relief; (ii) pertaining to the collection of assessments; or (iii) where the Association decides to exercise its right of self-help to cure the violation after written notice to the Owner and an opportunity to cure.

## ARTICLE XII AUTHORITY AND CONTROL BY DECLARANT

### Section 12.1 Declarant Rights.

Notwithstanding anything herein to the contrary, so long as Declarant owns at least one (1) Lot, Declarant shall have the sole right, but not the obligation, in its sole discretion, at any time, effective as of the date hereof, to control, perform and/or conduct the following:

- (1) amend the Street Tree Guidelines, the Design Guidelines and the Community-Wide Standard, in whole or in part;
- (2) enforce the provisions of this Declaration;
- (3) review, determine and enforce the architectural control of the Lots; and
- (4) assigns its rights and obligations under this Declaration to any entity at any time, in whole or in part.

Declarant's rights set forth above are absolute in its sole discretion and do not require the approval, consent, or joinder of (i) any Owner, (ii) the Association, (iii) the Board of Directors, or (iv) any committees or other parties which may be established with respect hereto. At such time as Declarant no longer owns a Lot within the Property, all of such rights of enforcement shall revert to the Board of Directors of the Association.

In the event any other provision in this Declaration is in contradiction to this Article XII, in whole or in part, this Article XII shall prevail.

Section 12.2 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, including Lots, and a nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned, or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repairs or damages relating to defective workmanship or materials.

Section 12.3 Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Property for the purpose of making, constructing, and installing such improvements to the Property, as Declarant deems appropriate in its discretion.

Section 12.4 Construction Activities.

All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, and/or its agents, contractors, subcontractors, licensees, and other designees, shall conduct development and construction activities within the Property and that such activities shall be conducted in phases and may cause disturbance and disruption which impact the use and enjoyment of a Lot.

By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Property generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree: (a) that such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other persons under their control or direction to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant and all of its agents, contractors, subcontractors, licensees, and other designees, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and



agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of Lots within the Property.

**Section 12.5 Changes in Master Plan.**

Each Owner acknowledges that Prestwyck is a planned community, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support any protest, challenge, or other form of objection to (a) changes in uses or density of property within the Property; or (b) changes in the master plan of Frisco Hills, including, without limitation, the enlargement of the master plan and the acquisition or revision of regulatory approvals to reflect the annexation of real property, without Declarant's prior written consent, which consent may be granted or withheld in Declarant's discretion.

Each Owner acknowledges and agrees that the present plans and themes for the Property's development may change and that it has not relied on any representation, warranty, or assurance by any person; (a) that any Lots, or other property or facilities will or will not be added, modified, or eliminated within the Property; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to: (a) the design, construction, completion, development, use, benefits, or value of the Property; or (b) the number, types, sizes, prices, or designs of any residential structures or improvements built or to be built in any part of the Property.

**Section 12.6 Dispute Resolution Involving Declarant.**

(a) **Right to Correct.** Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

(b) **Alternative Method for Resolving Disputes.** Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all persons subject to this Declaration; any Builder, its officers, directors, employees and agents; and any person not otherwise subject to this Declaration who agrees to submit to this Section 12.6 (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 12.6 (c) (collectively, the "Claims") to the mandatory procedures set forth in Section 12.6 (d).

(c) **Claims.** Those Claims between any of the Bound Parties, regardless of how the same might have arisen, relating to the quality of design or construction of improvements within the Property including the Common Properties or based upon any statements, representations, promises, or warranties made by or on behalf of any Bound Party, shall be subject to the provisions of this Section 12.6.

(d) Mandatory Procedures.

(i) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually, as a "Party", or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

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

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

(c) the proposed remedy; and

(d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(ii) Negotiations and Mediation.

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

(b) If the parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have two (2) days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation Notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(e) Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiations or mediation in accordance with this Section and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement, without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

(iii) Binding Arbitration.

(a) Upon Termination of Mediation, Claimant shall thereafter be entitled to initial final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such Claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three (3) arbitrators. Otherwise, unless mutually agreed to by the Parties, there shall be one (1) arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(b) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

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**ARTICLE XIII  
OBLIGATIONS OF BOARD OF DIRECTORS**

**Section 13.1 Obligations of Board of Directors.**

Notwithstanding anything herein to the contrary, and so long as Declarant is acting on behalf of the Board of Directors as further described in Section 13.2 below, the sole responsibility and obligation of the Board of Directors shall be to maintain the corporation books of the Association and maintain the Association in good corporate standing with Secretary of State of the State of Texas and in good standing with the Office of the Comptroller of Public Accounts of the State of Texas.

**Section 13.2 Liability for Association Operations.**

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant (including its successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Properties and the collection of assessments.

**Section 13.3 No Liability for Acts of Third Party.**

**OWNERS AND OCCUPANTS OF LOTS, AND THEIR RESPECTIVE GUESTS AND INVITEES, ARE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND FOR THEIR PROPERTY WITHIN THE PROPERTY. THE ASSOCIATION MAY BUT IS NOT OBLIGATED TO MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY WHICH PROMOTE OR ENHANCE SAFETY OR SECURITY WITHIN THE PROPERTY. HOWEVER, THE ASSOCIATION, AND DECLARANT SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PROPERTY, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.**

**NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING FIRE PROTECTION, BURGLAR ALARM, OR OTHER SECURITY MONITORING SYSTEMS, OR ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTY, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND SHALL BE RESPONSIBLE FOR INFORMING ITS TENANTS AND ALL OCCUPANTS OF ITS**

LOT THAT THE ASSOCIATION, THE BOARD AND ITS COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PROPERTY ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS OF LOTS, RESULTING FROM ACTS OF THIRD PARTIES.

**ARTICLE XIV  
EXPANSION OF THE PROPERTY**

Section 14.1 Expansion of the Property.

Declarant, in its sole discretion and without the approval of any other party, may from time to time subject this Declaration to additional real property by recording in the Real Property Records of the County, a Supplemental Declaration describing the additional real property to be subjected to this Declaration. Any such Supplemental Declaration which is executed by Declarant and the owner of such additional property, if other than Declarant, and recorded in the Real Property Records of the County shall not require the consent or approval of any other Owner or other person in order to be fully enforceable and effective to cause such additional real property to be incorporated herein. Nothing in this Declaration shall be construed to require Declarant to subject additional real property to this Declaration.

Section 14.2 Additional Covenants and Easements.

Declarant, in its sole discretion and without the approval of any other party, may from time to time subject any portion of the Property, whether now or hereafter a part of this Declaration, to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through the assessments, as described in Article X hereof. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the Property, whether now or hereafter a part of this Declaration, in order to reflect the different character and intended use of such Property. Any such Supplemental Declaration which is executed by Declarant and recorded in the Real Property Records of the County shall not require the consent or approval of any other Owner or other person in order to be fully enforceable and effective to cause such additional covenants and easements to be incorporated herein.

Section 14.3 Effect of Recording Supplemental Declaration.

A Supplemental Declaration shall be effective upon the recording of same in the Real Property Records of the County unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

ARTICLE XV  
GENERAL PROVISIONS

Section 15.1 Mortgages.

It is expressly provided that the breach of any of the conditions contained herein shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, as to the same promises or any part thereof encumbered by such mortgage or deed of trust, but said conditions shall be binding thereto as to Lots acquired by foreclosure, trustee's sale or otherwise, as to any breach occurring after such acquisition of title.

Section 15.2 Term.

This Declaration shall be enforceable by Declarant, the Association, any aggrieved Owner, and their respective legal representatives, heirs, successors, and assigns until December 31, 2050, after which time this Declaration shall extend automatically for successive 10-year periods unless at least sixty-seven percent (67%) of the then Owners have signed, within a six month period preceding the end of the initial term or any extension, an instrument which terminates this Declaration and such instrument is recorded in the Real Property Records of the County prior to the end of the term.

Section 15.3 Severability.

If any provision herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final (i.e., non-appealable) judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

Section 15.4 Binding Effect.

This Declaration is for the mutual benefit of, and shall be binding upon, each and every person acquiring any part of the Property, it being understood that the covenants, conditions, restrictions, easements, and other provisions contained in this Declaration are not for the benefit of the owner of any land except that which is a part of the Property. This Declaration, when executed, shall be filed of record in the Real Property Records of the County, so that each and every Owner or purchaser of any portion of the Property is on notice of the covenants, conditions, restrictions, easements, and other provisions herein contained.

Section 15.5 Notices.

Any notices or correspondence to an Owner shall be addressed to the street address of the Lot or to such other address as is specified by any such Owner in writing to the Association. The burden shall be on the Owner to prove that such written notification was duly given and delivered to the Association as provided below. Any notices or correspondence to the Association shall be addressed to the registered office of the Association as shown by the records of the Secretary of State for the State of Texas or to such other address as is specified by the Association in writing to the Owners.

Except as this Declaration or the Bylaws otherwise provide, all notices, demands, bills, statements, or other communications under this Declaration or the Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or by private carrier; if sent by United States mail; or, if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

Notices sent in accordance with this Declaration shall be deemed to have been duly given and effective:

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

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

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

Section 15.6 Transfer Under Deed of Trust.

Upon any transfer of Declarant's interest in and to the Property, or any part thereof, under the terms of any deed of trust lien upon the Property, whether voluntary or involuntary, by foreclosure, deed in lieu of foreclosure or otherwise, all rights, title and interests of Declarant under this Declaration, shall be transferred to and devolve upon the party to whom the Property or any part thereof, is thereby conveyed.

Section 15.7 Notice of Transfer.

If at any time a Lot is sold, the new Owner shall have the sole obligation to promptly notify the Association of the name and address of the new Owner and shall be responsible for any cost, charge or expense added to the account of such Owner which may have otherwise been avoided if the above information was promptly delivered to the Association.

Section 15.8 No Liability for Trespass.

Whenever the Association, the Board of Directors or Declarant exercises any right hereunder and in connection therewith enters upon any Lot, such parties shall not be liable for trespass upon such Lot.

Section 15.9 Lien Priority.

Notwithstanding any other provision of the Declaration, the lien to secure the payment of assessments and any other lien which the Association may have on any Lot pursuant to the

Declaration for (a) assessments or other charges becoming payable on or after the date of recordation of the first mortgage or deed of trust on any Lot, or (b) any fees, late charges, fines or interest that may be levied by the Association in connection with unpaid assessments, shall be subordinate to the lien or equivalent security interest of any legitimate third-party first lien mortgage or deed of trust on any Lot, if any. Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Owner personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future assessments or charges be affected in any manner. Any such maintenance charges or assessments which are extinguished pursuant to the foregoing provision shall be reallocated and assessed to all Lots as a common expense.

Section 15.10 Use of Recreational Facilities and Other Common Properties.

The property made subject to this Declaration will contain common recreational facilities available for the use and enjoyment of Owners of property, including lots and homes, within Prestwyck, their families, tenants and other occupants of their property, and the guests of any such persons. EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY PORTION OF THE PROPERTY MADE SUBJECT TO THIS DECLARATION, ACKNOWLEDGES THAT THE USE AND ENJOYMENT OF ANY RECREATIONAL FACILITY OR ANY OTHER PORTION OF THE COMMON PROPERTIES INVOLVES RISK OF PERSONAL INJURY OR DAMAGE TO PROPERTY.

Each Owner acknowledges, understands, and covenants to inform his or her family members, and tenants and other occupants of Owner's property that Declarant, the Association, the Board and any committees, and Builders constructing homes and other improvements within Prestwyck are not insurers of personal safety. EACH PERSON USING SUCH RECREATIONAL FACILITIES OR ANY OTHER PORTION OF THE COMMON PROPERTIES ASSUMES ALL RISKS OF PERSONAL INJURY, DEATH, AND LOSS OR DAMAGE TO PROPERTY, RESULTING FROM THE USE AND ENJOYMENT OF ANY RECREATIONAL FACILITY OR OTHER PORTION OF THE COMMON PROPERTIES. Each Owner agrees that Declarant, the Association, the Board and committees, and builders within the community shall not be liable to any person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damages arising from personal injury or death, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the use of any recreational facility or other portions of the Common Properties, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the Association, or any Builder within the community. THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.

EACH OWNER ACKNOWLEDGES AND AGREES THAT THE ABOVE RELEASE FROM LIABILITY IS CONSIDERATION FOR, AND A CONDITION TO, THE USE AND



ENJOYMENT OF THE RECREATIONAL FACILITIES AND OTHER COMMON PROPERTIES WITHIN PRESTWYCKAND THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT AND BUILDERS TO SELL, CONVEY, LEASE, AND/OR ALLOW THE USE OF LOTS WITHIN FRISCO HILLS. ANY VIOLATION OF THIS RELEASE AGREEMENT BY AN OWNER, OR ANY OF OWNER'S FAMILY MEMBERS, TENANTS AND OTHER OCCUPANTS OF OWNER'S PROPERTY, OR THEIR RESPECTIVE GUESTS SHALL BE GROUNDS FOR THE SUSPENSION OR TERMINATION OF ALL OF SUCH PERSONS' USE PRIVILEGES IN SUCH FACILITIES.

Section 15.11 Construction of Declaration and All Association Documents.

The provisions of this Declaration and all other documents of the Association shall be liberally construed to give effect to its intended purpose. All doubts regarding the meaning, significance or effect of a provision in this Declaration or other documents of the Association, shall be resolved in favor of the operation of the Association and its enforcement of the Declaration.

Section 15.12 Rights of the City of McKinney.

The Association shall not seek, by either act or omission, to abandon the Association's obligations as established by this Declaration to maintain the Common Properties and Improvements. The Association may not be dissolved or terminated without the prior written consent of the City of McKinney, Texas ("City"). However, in the event that:

- (i) The Association dissolves and the Common Properties shall not be either (i) dedicated to and accepted by an appropriate municipal corporation, public agency, authority or utility to be devoted to purposes as nearly as practicable to the same as those to which such Common Properties were required to be devoted by the Association, or (ii) conveyed to another organization or entity which assumes all obligations imposed hereunder upon the Association to maintain said Common Properties; or
- (ii) The Association, its successors or assigns, shall fail or refuse to adequately maintain the appearance and condition of the Common Properties and Improvements which the Association is obligated to maintain hereunder;

then, in either such event, the City shall have the right, but not the obligation, thereafter to assume the duty of performing the Association's maintenance obligations of all such Common Properties and Improvements at any time after such dissolution, act or omission, upon giving written notice to the Owners, or at any time after the expiration of sixty (60) days after receipt by the Association, or the Association's successor or assign, of written notice specifying in detail the nature and extent of the failure to maintain without such failure being remedied.

Upon assuming such maintenance obligations, the City may collect, when the same become due, the Assessments levied by the Association pursuant to the provisions hereof for the purposes of repairing, replacing, maintaining or caring for the Common Properties and Improvements; and, if necessary, the City may enforce the payment of delinquent Assessments in

the manner set forth in this Declaration. In the alternative, upon assuming such maintenance obligations, the City may levy an Assessment upon each Lot on a pro rata basis for the cost of such maintenance to be provided by the Association as set forth in this Declaration, which Assessment shall constitute an Assessment Lien upon the Lot(s) against which each Assessment is made.

In the event the City assumes the maintenance and operation of the Common Properties and Improvements and the costs of operation exceed the revenues therefrom or the Assessments collected from the Owners, the City shall have the right to (i) cause the Association to sell, transfer and convey the Common Properties and Improvements to a financially responsible third party who assumes the Association's responsibility to maintain and operate the Common Properties and Improvements as provided in the Declaration and in a condition not less than the minimum standards required by the City, (ii) cause the Association to sell, transfer and convey the Common Properties and Improvements to an Owner to be redeveloped in accordance with the architectural control standards set forth in the Declaration, and used and occupied for single family residential purposes in accordance with the terms and provisions of the Declaration, or (iii) demolish the Common Properties and Improvements so long as the Lot or Lots utilized therefor are developed as an attractive park or greenbelt area for the use and enjoyment of the Owners as a common area. During any period that the City assumes the obligation to maintain and care for the Common Properties and Improvements, the Association shall have no obligation or authority with respect to such maintenance and care.

The right and authority of the City to maintain the Common Properties and Improvements shall cease and terminate when the Association, its successors or assigns, shall present to the City reasonable evidence of the Association's willingness and ability to resume maintenance of the Common Properties and Improvements. Under no circumstances shall the City be liable to the Association or any Owner or their respective heirs, devisees, personal representatives, successors and assigns for negligent acts or omissions relating in any manner to maintaining, improving and preserving the Common Properties and Improvements.

(a) Easement. In the event the City assumes the duty of performing the maintenance obligations of the Association as provided herein, then the City, its agents, representatives and employees, shall have the right of access, ingress and egress to and over the Common Properties and Improvements for the purposes of maintaining, improving and preserving the same.

(b) Amendment. Notwithstanding anything herein to the contrary: (a) the provisions of this Article shall not be amended or deleted from this Declaration without the prior written consent of the City; (b) this Declaration may not be amended to permit any condition at or use of the Subdivision in a manner which conflicts with or is in violation of any City ordinance without the prior written consent of the City; and (c) this Declaration may not be terminated without the prior written consent of the City. Except as provided in the preceding sentence, this Declaration can be amended without the consent of the City.

(c) Monitoring by City. On request of the City from time to time, the Association will report to the City on the Association's budgetary actions, financial condition, and collection activities on owners' assessments. If the City deems the Association's finances to be inadequate to support the level of maintenance required by City pursuant to applicable ordinance, the City may

require additional security to ensure that the Association provides the required maintenance of the Common Properties and Improvements.

EXECUTED this 28<sup>th</sup> day of December, 2012.

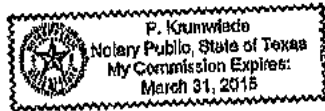
DECLARANT:

206 MCKINNEY, LLC,  
a Texas limited liability company

By: *Mehrdad Moayedj*  
Mehrdad Moayedj, Agent and Attorney-in-Fact

STATE OF TEXAS     §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on this 28<sup>th</sup> day of Dec., 2012, by Mehرداد Moayedj, duly authorized Agent and Attorney-in-Fact of 206 McKinney, LLC, a Texas limited liability company, for the purposes and consideration therein expressed and in the capacity therein stated, on behalf of such limited liability company.



*P. Kurnwadeo*  
Notary Public, State of Texas

**CONSENT AND JOINDER BY LIENHOLDER**

The undersigned, Collin Bank ("Lender"), the beneficiary under that certain Deed of Trust (with Security Agreement and Assignment of Rents) (the "Deed of Trust") dated as of August 4, 2010, from 206 McKinney, LLC, ("Borrower"), to Trent Tomlin, Trustee, recorded in the Real Property Records of Collin County, Texas as Instrument No. 20100810000824680, as amended by that Loan Renewal, Extension and Modification Agreement dated March 1, 2012 and recorded at Instrument No. 20120308000274390 in the Real Property Records of Collin County, Texas covering and affecting the property described on Exhibit "A" attached to this Declaration ("Mortgaged Property"), hereby joins in the execution of this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PRESTWYCK (this "Declaration") for the purpose of evidencing Lender's consent to the recording of this Declaration, which will not be extinguished by foreclosure of any lien assigned to or for the benefit of Lender, or its affiliates, successors, or assigns.

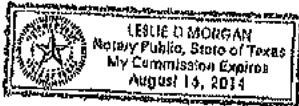
Dated Jan 3, 2013.

COLLIN BANK

By: [Signature]  
Name: Bryan L. Alexander  
Title: CEO, EVP

STATE OF TEXAS §  
  §  
COUNTY OF COLLIN §

This Instrument was acknowledged before me this 3<sup>rd</sup> day of January, 2013, by Bryan L. Alexander CEO, EVP of Collin Bank, on behalf of said bank.



[Signature]  
Notary Public for the State of Texas

Exhibit A  
206 Tract Legal Description

## EXHIBIT "A"

Being a 206.00 acre tract of land situated in the William McCarty Survey, Abstract No. 575, Collin County, Texas, and being a portion of that certain called 128.769 acre tract of land conveyed to Blue Star Land, L.P., as recorded in Volume 5132, Page 3914, Deed Records, Collin County, Texas, and being a portion of that certain called 110.140 acre tract of land conveyed in deed to Blue Star Land, L.P., as recorded in Volume 5026, Page 4363, said Deed Records, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod set for the most northerly northwest corner of Blue Star Land tract (Vol. 5132, Pg. 3914), same being the north end of a corner clip at the intersection of the south right-of-way line of U.S. Highway 380 (a variable width right-of-way) with Coit Road (County Road 72);

THENCE South 89 deg. 27 min. 24 sec. East, along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and the south right-of-way line of said U.S. Highway 380, a distance of 1859.38 feet to a 1/2 inch iron rod set for the POINT OF BEGINNING;

THENCE South 89 deg. 27 min. 24 sec. East, continuing along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and the south right-of-way line of said U.S. Highway 380, passing at a distance of 58.24 feet a 5/8 inch iron rod found, and continuing along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914), and the south right-of-way line of said U.S. Highway 380, a total distance of 198.70 feet to a TX DOT Monument found for corner, said point being the northeast corner of said Blue Star Land tract (Vol. 5132, Pg. 3914), same being the northwest corner of aforesaid called 110.140 acre Blue Star Land tract (Volume 5026, Pg. 4363);

THENCE along the common line of said Blue Star Land tract (Vol. 5026, Pg. 4363) and the south right-of-way line of said U.S. Highway 380 as follows:

South 89 deg. 26 min. 13 sec. East, a distance of 1033.50 feet to a 5/8 inch iron rod with "Pogue Eng." cap found for corner;

South 84 deg. 04 min. 11 sec. East, a distance of 200.45 feet to a 1/2 inch iron rod set for corner;

South 89 deg. 26 min. 42 sec. East, a distance of 315.77 feet to a TX DOT monument found for corner, said point being the northeast corner of said Blue Star Land tract (Vol. 5026, Pg. 4363), same being the northwest corner of Block A, of the Red Bud Estates, Phase II, an Addition to Collin County, Texas, according to the plat thereof recorded in Cabinet C, Page 517, Plat Records, Collin County, Texas;

THENCE South 00 deg. 15 min. 41 sec. West, along the common line of said Blue Star Land tract (Vol. 5026, Pg. 4363) and said Block A, passing a 5/8 inch iron rod found at the southwest corner of said Block A, same being the northwest corner of Block A, of the Red Bud Estates, Phase I, an Addition to Collin County, Texas, according to the plat thereof recorded in Cabinet C, Page 189, said Plat Records and continuing along the common line of said Blue Star Land tract (Vol. 5026, Pg. 4363), and said Block A (Cab. C, Pg. 189), a

total distance of 2777.13 feet to a 1/2 inch iron rod found for the southeast corner of said Blue Star Land tract (Vol. 5026, Pg. 4363), same being the southwest corner of said Block A (Cab. C, Pg. 189), same being in the north line of that certain tract of land conveyed in deed to D.R. Horton-Texas, Ltd., as recorded in Volume 6051, Page 37, said Deed Records, same being on the boundary line agreement as recorded in Volume 1024, Page 853;

THENCE North 89 deg. 42 min. 38 sec. West, along the common line of said Blue Star Land tract (Vol. 5026, Pg. 4363), and said D.R. Horton-Texas tract and along said boundary line agreement, passing the southwest corner of said Blue Star Land tract (Vol. 5026, Pg. 4363), same being the southeast corner of aforesaid Blue Star Land tract (Vol. 5132, Pg. 3914), and continuing along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and said D.R. Horton-Texas tract, passing at a distance of 3700.28 a 1/2 inch iron rod found for an offset corner, and continuing a total distance of 3720.91 feet to a pk nail set for corner, said point being the southwest corner of said Blue Star Land tract (Vol. 5026, Pg. 3914), same being the northwest corner of said D.R. Horton-Texas tract, same being the approximate centerline of aforesaid Colt Road;

THENCE North 00 deg. 28 min. 50 sec. East, along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914), and along the approximate centerline of said Colt Road, a distance of 2051.82 feet to a pk nail set for corner;

THENCE through the interior of said Blue Star Land tract (Vol. 5132, Pg. 3914) as follows:

South 89 deg. 27 min. 24 sec. East, a distance of 1016.03 feet to a 1/2 inch iron rod set for corner;

North 46 deg. 32 min. 52 sec. East, a distance of 178.89 feet to a 1/2 inch iron rod set for corner;

South 88 deg. 47 min. 53 sec. East, passing the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and aforesaid Blue Star Land tract (Vol. 5026, Pg. 4363) and continuing a total distance of 1084.36 feet to a 1/2 inch iron rod set for corner, said point being the beginning of a non-tangent curve to the right having a radius of 638.50 feet and a delta angle of 52 deg. 59 min. 02 sec.;

Along said non-tangent curve to the right passing the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and said Blue Star Land tract (Vol. 5026, Pg. 4363) and continuing a total arc distance of 590.45 feet and a chord bearing and distance of North 24 deg. 50 min. 25 sec. West, 569.63 feet to a 1/2 inch iron rod set for corner;

North 01 deg. 38 min. 59 sec. East, a distance of 109.10 feet to a 1/2 inch iron rod set for corner;

North 43 deg. 54 min. 12 sec. West, a distance of 35.70 feet to the POINT OF BEGINNING and containing 8,973,343 square feet or 206.00 acres of computed land.

**SAVE AND EXCEPT THE FOLLOWING TWO TRACTS DESCRIBED ON THE FOLLOWING PAGES:**

**SAVE AND EXCEPT THE FOLLOWING 41.267 ACRE TRACT DESCRIBED AS:**

ALL that certain tract or parcel of land situated in the WILLIAM McCARTY SURVEY, ABSTRACT NUMBER 573, in the City of McKinney, Collin County, Texas, being part of that certain called 206.00 acre tract described in a deed to 206 MCKINNEY, LLC, as recorded in Clark's File Number 20100810000824670 of the Land Records of Collin County, Texas, the herein tract being more particularly described as follows:

COMMENCE at a 5/8 " iron rebar found at the southwest corner of said 206 MCKINNEY tract, same being the northwest corner of a called 308.388 acre tract described as Planning Area 15 in a deed to D. R. HORTON-TEXAS, LTD., as recorded in Volume 6051, Page 37 of the Land Records of Collin County, Texas, which corner is in the center of County Road 72 (Coit Road), common with the west line of said McCarty Survey;

THENCE N 89°47'36" E, along the south line of said 206 MCKINNEY tract, same being the north line of said HORTON tract, a distance of 90.00 feet to a 1/2 " capped iron rebar (PETSCHKE & ASSOC., INC.) set at the POINT OF BEGINNING of the herein described tract of land;

THENCE N 00°01'14" W, parallel with and 60.00 feet easterly from the most southerly west line of said 206 MCKINNEY tract, common with said centerline of County Road 72 and west line of McCarty Survey, a distance of 1082.01 feet to a 1/2 " capped iron rebar set for corner, same being the most westerly southwest corner of the proposed Planning Area 17 Collector Road, Phase 2;

THENCE along the south line of said proposed Planning Area 17 Collector Road, Phase 2, in an easterly direction the following seven (7) courses:

- 1.) N 44°53'11" E a distance of 35.41 feet to a 1/2 " capped iron rebar set at an angle point;
- 2.) N 89°47'36" E a distance of 390.00 feet to a 1/2 " capped iron rebar set at the point of curvature of a curve having a central angle of 4°49'18", a radius of 600.00 feet and a chord which bears N 87°22'58" E, 50.48 feet;
- 3.) along the arc of said curve to the left a distance of 50.49 feet to a 1/2 " capped iron rebar set at the point of tangency of said curve;
- 4.) N 84°58'19" E a distance of 74.40 feet to a 1/2 " capped iron rebar set at the point of curvature of a curve having a central angle of 4°49'18", a radius of 600.00 feet and a chord which bears 87°22'58" E, 50.48 feet;
- 5.) along the arc of said curve to the right a distance of 50.49 feet to a 1/2 " capped iron rebar set at the point of tangency of said curve;
- 6.) N 89°47'36" E a distance of 925.86 feet to a 1/2 " capped iron rebar set at point of curvature of a curve having a central angle of 28°14'59", a radius of 970.00 feet and a chord which bears S 76°04'54" E, 473.43 feet;
- 7.) along the arc of said curve to the right a distance of 478.26 feet to a 1/2 " capped iron rebar set for corner at the northeast corner of the herein described tract of land;

THENCE along the east line of the herein described tract of land in a southerly direction the following two (2) courses:

- 1.) S 38°20'48" W a distance of 1028.70 feet to a 1/2 " capped iron rebar set at an angle point;



2.) S 11°41'55" W a distance of 201.83 feet to a 1/2 " capped iron rebar set at the southeast corner of the herein described tract of land, same being in the south line of said 206 McKINNEY tract, which line is the aforesaid north line of HORTON tract;

THENCE S89°47'36" W, along said common line, a distance of 1295.80 feet to the POINT OF BEGINNING containing 41.267 acres (1,797,577 SQUARE FEET) of land, MORE OR LESS.

**SAVE AND EXCEPT THE FOLLOWING 13.3 ACRE TRACT DESCRIBED AS:**

WHEREAS 206McKINNEY, LLC, a Texas limited liability company, is the owner of a tract of land situated in the WILLIAM McCARTY SURVEY, ABSTRACT NUMBER 575, in the City of McKinney, Collin County, Texas, being part of a called 206.00 acre tract described in a deed to 206 McKINNEY, LLC, as recorded in Clerk's File Number 20100810000824670 of the Land Records of Collin County, Texas, the herein tract being more particularly described as follows:

COMMENCE at a nail previously set in brass disc (PETSCHÉ & ASSOC., INC.) at the most westerly northwest corner of said 206 McKINNEY tract, same being the southwest corner of a 32.916 acre tract of land, which tract is the remaining portion of a called 238.92 acre tract described in deeds to BLUE STAR LAND, LP, as recorded in Volume 5028, Page 4363 and Volume 6132, Page 3914 of the Land Records of Collin County, Texas, which corner is in the west line of COIT ROAD PHASE 3, according to the Record Plat thereof, as recorded in Volume 2012, Page 142 of the Plat Records of Collin County, Texas;

THENCE S 89°57'04" E along the most westerly north line of said 206 McKINNEY tract, same being the south line of said BLUE STAR tract, a distance of 60.00 feet to the POINT OF BEGINNING of the herein described tract of land, same being in the east line of said COIT ROAD PHASE 3 (60 feet wide);

THENCE continue S 89°57'04" E along said common line, a distance of 955.96 feet to a 1/2 " capped iron rebar (RPLS 3688) found for corner at an angle point in said line;

THENCE S 46°03'12" W, departing said common line a distance of 486.62 feet to a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) set at an angle point;

THENCE S 60°12'24" E a distance of 533.09 feet to a 1/2 " capped iron rebar set for corner in the north line of PRESTWICK HOLLOW DRIVE PHASE 2, according to the Record Plat thereof, as recorded in Volume 2012, Page 144 of the Plat Records of Collin County, Texas;

THENCE along said north line of PRESTWICK HOLLOW DRIVE PHASE 2, in a westerly direction the following eight (8) courses:

1.) S 89°47'38" W a distance of 17.44 feet to a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) found at the point of curvature of a curve having a central angle of 4°40'18", a radius of 600.00 feet and a chord which bears N 87°47'45" W, 50.48 feet;

2.) along the arc of said curve to the right a distance of 50.49 feet to a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) found at the point of tangency of said curve;

3.) N 85°23'06" W a distance of 74.40 feet to a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) found at the point of curvature of a curve having a central angle of 4°49'18", a radius of 600.00 feet and a chord which bears N 87°47'45" W, 50.48 feet;

4.) along the arc of said curve to the left a distance of 50.49 feet to a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) found the point of tangency of said curve;

5.) S 89°47'36" W a distance of 89.70 feet to a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) found at an angle point;

6.) N 85°37'57" W a distance of 150.48 feet to a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) found at an angle point;

7.) S 89°47'36" W a distance of 150.00 feet to a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) found at an angle point;

8.) N 45°05'49" W, at 19.77 feet pass a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) found at the most westerly northwest corner of said PRESTWICK HOLLOW DRIVE PHASE 2, same being an angle point in the aforesaid east line of COIT ROAD PHASE 3, a total distance of 35.30 feet to a 1/2 " capped iron rebar (PETSCHÉ & ASSOC., INC.) found for corner in said east line of COIT ROAD PHASE 3;

THENCE N 00°01'14" W along said line a distance of 826.30 feet to the POINT OF BEGINNING, containing 13.300 acres (579,352 SQUARE FEET), of land, MORE OR LESS.

Exhibit "B"  
Leasur Tract Legal Description

ALL that certain tract or parcel of land situated in the WILLIAM McCARTY SURVEY, ABSTRACT NUMBER 576, in the City of McKinney, Collin County, Texas, being part of that certain called 206.00 acre tract described in a deed to 206 MCKINNEY, LLC, as recorded in Clerk's File Number 20100810000824870 of the Land Records of Collin County, Texas, the herein tract being more particularly described as follows:

COMMENCE at a 5/8 " iron rebar found at the southwest corner of said 206 MCKINNEY tract, same being the northwest corner of a called 306.388 acre tract described as Planning Area 15 in a deed to D. R. HORTON-TEXAS, LTD., as recorded in Volume 6051, Page 37 of the Land Records of Collin County, Texas, which corner is in the center of County Road 72 (Colt Road), common with the west line of said McCarty Survey;

THENCE N 89°47'36" E, along the south line of said 206 MCKINNEY tract, same being the north line of said HORTON tract, a distance of 60.00 feet to a 1/2 " capped iron rebar (PETSCHKE & ASSOC., INC.) set at the POINT OF BEGINNING of the herein described tract of land;

THENCE N 00°01'14" W, parallel with and 60.00 feet easterly from the most southerly west line of said 206 MCKINNEY tract, common with said centerline of County Road 72 and west line of McCarty Survey, a distance of 1082.01 feet to a 1/2 " capped iron rebar set for corner, same being the most westerly southwest corner of the proposed Planning Area 17 Collector Road, Phase 2;

THENCE along the south line of said proposed Planning Area 17 Collector Road, Phase 2, in an easterly direction the following seven (7) courses:

- 1.) N 44°53'11" E a distance of 35.41 feet to a 1/2 " capped iron rebar set at an angle point;
- 2.) N 89°47'36" E a distance of 390.00 feet to a 1/2 " capped iron rebar set at the point of curvature of a curve having a central angle of 4°49'18", a radius of 600.00 feet and a chord which bears N 87°22'58" E, 50.48 feet;
- 3.) along the arc of said curve to the left a distance of 50.48 feet to a 1/2 " capped iron rebar set at the point of tangency of said curve;
- 4.) N 84°58'19" E a distance of 74.40 feet to a 1/2 " capped iron rebar set at the point of curvature of a curve having a central angle of 4°49'18", a radius of 600.00 feet and a chord which bears 87°22'58" E, 50.48 feet;
- 5.) along the arc of said curve to the right a distance of 50.48 feet to a 1/2 " capped iron rebar set at the point of tangency of said curve;
- 6.) N 89°47'36" E a distance of 925.86 feet to a 1/2 " capped iron rebar set at point of curvature of a curve having a central angle of 28°14'59", a radius of 970.00 feet and a chord which bears S 76°04'54" E, 473.43 feet;
- 7.) along the arc of said curve to the right a distance of 473.26 feet to a 1/2 " capped iron rebar set for corner at the northeast corner of the herein described tract of land;

THENCE along the east line of the herein described tract of land in a southerly direction the following two (2) courses:

- 1.) S 38°20'48" W a distance of 1028.70 feet to a 1/2 " capped iron rebar set at an angle point;
- 2.) S 11°41'55" W a distance of 201.83 feet to a 1/2 " capped iron rebar set at the southeast corner

of the herein described tract of land, same being in the south line of said 206 McKINNEY tract,  
which line is the aforesaid north line of HORTON tract;

THENCE S89°47'36" W, along said common line, a distance of 1296.80 feet to the POINT OF BEGINNING  
containing 41.267 acres (1,797,577 SQUARE FEET) of land, MORE OR LESS.

Exhibit "C"

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR PRESTWYCK HOMEOWNERS ASSOCIATION  
DESIGN GUIDELINES**

**PART ONE: LANDSCAPING, FENCES AND EXTERIOR ELEMENTS**

**SECTION 1.1 LANDSCAPING:**

Upon completion of each dwelling unit, each dwelling must comply with the landscaping requirements of Section 146-135 of the City of McKinney Zoning Ordinance. Notwithstanding compliance with the foregoing, the following landscape elements shall be installed prior to occupancy of the dwelling:

- 1.1.1 Sod: Each dwelling shall have full sod installed for the entire front yard and a minimum of ten (10) feet back from the front wall face for each side yard, or to the side yard fence, whichever is greater.
- 1.1.2 Trees: Three (3) canopy trees with a minimum caliper of 4", measured at a point six (6) inches above ground level and 12 feet in height at the time of planting. At least one (1) of the trees shall be located in the front yard. Canopy trees are defined at Section 146-135 of the City of McKinney Zoning Ordinance. Each homeowner shall be responsible for maintenance and preservation of trees located on their property and shall promptly replace dead trees within ninety (90) days of loss occurrence.
- 1.1.3 Shrubbery and Planting Beds: Each Dwelling shall have a minimum of ten (10) one (1) gallon shrubs planted in a mulched planting bed; the planting bed shall have edging materials to separate the sod and bed mulch areas. The homeowner shall be responsible for the maintenance and preservation of the shrubs and planting bed, and shall promptly replace dead plants within ninety (90) days of loss occurrence.

**SECTION 1.2 FENCES:**

- 1.2.1 Major thoroughfares and Corner Lots: All fencing on corner lots and backing up to streets and major thoroughfares will be considered major thoroughfare fencing. Fencing, which shall be board on board, and wall construction shall comply with the details indicated in Exhibit Attachment 1.2.1.1. All such fencing facing major thoroughfare shall be stained and preserved as follows:

Manufacturer:	Sherwin Williams
Color:	Banyan Brown - Apply per product installation
Manufacturer:	Standard Paint
Color:	Sable Brown - Apply per product installation

Manufacturer: Seal Rite  
Color: Medium Brown – Apply per product installation

- 1.2.2 Standard Side and Rear Yard Fences – Interior Lots: For all interior lots, fence and wall construction shall comply with the materials and details indicated in Exhibit Attachment 1.2.2.1. All portions of the fence that are viewable from the street shall be stained with the colors specified above at Section 1.2.1
- 1.2.3 Greenbelt Area Side and Rear Yard Fences: All lots adjacent to any Greenbelt area shall have black finished forty-eight inch (48") high wrought iron fences for the rear sixteen feet (16') of each side and the full width of rear lot lines as detailed in Exhibit 1.2.3.2. All fences shall be consistent; no variation of design shall be permitted. Fence areas shall be unobstructed by screening or other materials unless specifically approved by the Association.

#### **SECTION 1.3 MAIL BOXES:**

- 1.3.1 Standard Mail Boxes: Mail Box construction shall be brick, constructed out of the same brick color used on the home, and comply with the materials and details indicated in Exhibit Attachment 1.3.1.1.
- 1.3.2 Mail Box Location: Mail Box shall be located on the front corner of the lot between the sidewalk and the street approximately 1 foot inside the property line and situated in such a manner that it services the neighboring lot.

#### **SECTION 1.4 FLAGS AND FLAGPOLES**

- 1.4.1 The only flags which may be displayed are: (i) the flag of the United States of America; (ii) the flag of the State of Texas; and (iii) an official or replica flag of any branch of the United States armed forces. No other types of flags, pennants, banners, kits or similar types of displays are permitted on a Lot if the display is visible from a street or Common Area.
- 1.4.2 The flag of the United States must be displayed in accordance with 4 U.S.C. Sections 5-10.
- 1.4.3 The flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code.
- 1.4.4 Any freestanding flagpole, or flagpole attached to a dwelling, shall be constructed of permanent, long-lasting materials. The materials used for the flagpole shall be harmonious with the dwelling, and must have a silver finish with a gold or silver ball at the top. The flagpole must not exceed three (3) inches in diameter.

- 1.4.5 The display of a flag, or the location and construction of the supporting flagpole, shall comply with applicable zoning ordinances, easements, and setbacks of record.
- 1.4.6 A displayed flag, and the flagpole on which it is flown, shall be maintained in good condition at all times. Any flag that is deteriorated must be replaced or removed. Any flagpole that is structurally unsafe or deteriorated shall be repaired, replaced, or removed.
- 1.4.7 Only one flagpole will be allowed per Lot. A flagpole can either be securely attached to the face of the dwelling (no other structure) or be a freestanding flagpole. A flagpole attached to the dwelling may not exceed 4 feet in length. A freestanding flagpole may not exceed 20 feet in height. Any freestanding flagpole must be located in either the front yard or backyard of a Lot, and there must be a distance of at least 5 feet between the flagpole and the property line.
- 1.4.8 Any flag flown or displayed on a freestanding flagpole may be no smaller than 3'x5' and no larger than 4'x6'.
- 1.4.9 Any flag flown or displayed on a flagpole attached to the dwelling may be no larger than 3'x5'.
- 1.4.10 Any freestanding flagpole must be equipped to minimize halyard noise. The preferred method is through the use of an internal halyard system. Alternatively, swivel snap hooks must be covered or "Quiet Halyard" Flag snaps installed. Neighbor complaints of noisy halyards are a basis to have flagpoles removed until Owner resolves the noise complaint.
- 1.4.11 The illumination of a flag is allowed so long as it does not create a disturbance to other residents in the community. Solar powered, pole mounted light fixtures are preferred as opposed to ground mounted light fixtures. Compliance with all municipal requirements for electrical ground mounted installations must be certified by Owner. Flag illumination may not shine into another dwelling. Neighbor complaints regarding flag illumination are a basis to prohibit further illumination until Owner resolves complaint.
- 1.4.12 Flagpoles shall not be installed in Common Area or property maintained by Prestwyok.
- 1.4.13 All freestanding flagpole installations must receive prior written approval from the Reviewer.

#### **SECTION 1.5 RAIN BARRELS OR RAINWATER HARVESTING SYSTEMS**

- 1.5.1 Rain barrels or rain water harvesting systems and related system components (collectively, "Rain Barrels") may only be installed after receiving the written

approval of the Reviewer.

- 1.5.2 Rain Barrels may not be installed upon or within common area of Prestwyck.
- 1.5.3 Under no circumstances shall Rain Barrels be installed or located in or on any area within a Lot that is in-between the front of the property owner's home and an adjoining or adjacent street.
- 1.5.4 The rain barrel must be of color that is consistent with the color scheme of the property owner's home and may not contain or display any language or other content that is not typically displayed on such Rain Barrels as manufactured.
- 1.5.5 Rain Barrels may be located in the side-yard or back-yard of an owner's Residential Parcel so long as these may not be seen from a street, another Lot or any common area of Prestwyck.
- 1.5.6 In the event the installation of Rain Barrels in the side-yard or back-yard of an owner's property in compliance with paragraph e above is impossible, the Reviewing Body may impose limitations or further requirements regarding the size, number and screening of Rain Barrels with the objective of screening the Rain Barrels from public view to the greatest extent possible. The owner must have sufficient area on their Lot to accommodate the Rain Barrels.
- 1.5.7 Rain Barrels must be properly maintained at all times or removed by the owner.
- 1.5.8 Rain Barrels must be enclosed or covered.
- 1.5.9 Rain Barrels which are not properly maintained, become unsightly or could serve as a breeding pool for mosquitos must be removed by the owner from the Lot.

#### SECTION 1.6 RELIGIOUS DISPLAYS

- 1.6.1 An owner may display or affix on the entry to the owner's or resident's dwelling one or more religious items, the display of which is motivated by the owner's or resident's sincere religious belief.
- 1.6.2 If displaying or affixing of a religious item on the entry to the owner's or resident's dwelling violates any of the following covenants, Prestwyck may remove the item displayed:
  - (1) threatens the public health or safety;
  - (2) violates a law;
  - (3) contains language, graphics, or any display that is patently offensive to a passerby;
  - (4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or



- (5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 25 square inches
- 1.6.3 No owner or resident is authorized to use a material or color for an entry door or door frame of the owner's or resident's dwelling or make an alteration to the entry door or door frame that is not authorized by the Prestwyck Declaration or otherwise expressly approved by the Reviewer.

## **PART TWO: DWELLING UNITS**

### **SECTION 2.1 ROOFS**

- 2.1.1 Roof Pitch: All Roof Pitches shall have a minimum of 6-in-12 slopes.
- 2.1.2 Roofing Materials: Roofing materials shall be asphalt shingles with a 20-year rated shingle having a minimum weight of 220 pounds per square (100 square feet) and have a weathered brown or gray color. Other roofing materials shall not be used without written approval from the Architectural Control Committee.
- 2.1.3 Dormers & Above Roof Chimneys: Dormers and Chimney Chases, above roof structure and roofing materials, may be finished with an approved exterior grade siding material. All Fireplace flues shall be enclosed and finished; exposed pre-fabricated metal flue piping is prohibited.

### **SECTION 2.2 CERTAIN ROOFING MATERIALS**

- 2.2.1 Roofing shingles covered by this Section are exclusively those designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (iii) provide solar generation capabilities (collectively, "Roofing Shingles").
- 2.2.2 Roofing Shingles allowed under these Guidelines shall:
  - (1) resemble the shingles used or otherwise authorized for use in Prestwyck;
  - (2) be more durable than and are of equal or superior quality to the shingles used or otherwise authorized for use in Prestwyck; and
  - (3) match the aesthetics of the property surrounding the property of the owner requesting permission to install the Roofing Shingles.
- 2.2.3 The owner requesting permission to install the Roofing Shingles will be solely responsible for accrediting, certifying and demonstrating to the Reviewer that the proposed installation is in full compliance with paragraphs a and b above.
- 2.2.4 Roofing Shingles shall be installed after receiving the written approval of the Reviewer.

- 2.2.5 Owners are hereby placed on notice that the installation of Roofing Materials may void or adversely affect warranties.

### SECTION 2.3 SOLAR PANELS

- 2.3.1 Solar energy devices, including any related equipment or system components (collectively, "Solar Panels") may only be installed after receiving the written approval of the Reviewer.
- 2.3.2 Solar Panels may not be installed upon or within common area or any area which is maintained by Prestwyck.
- 2.3.3 Solar Panels may only be installed on designated locations on the roof of a home, on any structure allowed under any Prestwyck dedicatory instrument, or within any fenced rear-yard or fenced-in patio of the owner's property, but only as allowed by the Reviewer. Solar Panels may not be installed on the front elevation of the home.
- 2.3.4 If located on the roof of a home, Solar Panels shall:
- (1) not extend higher than or beyond the roofline;
  - (2) conform to the slope of the roof;
  - (3) have a top edge that is parallel to the roofline; and
  - (4) have a frame, support bracket, or wiring that is black or painted to match the color of the roof tiles or shingles of the roof. Piping must be painted to match the surface to which it is attached, i.e. the soffit and wall. Panels must blend with the color of the roof to the greatest extent possible.
- 2.3.5 If located in the fenced rear-yard or patio, Solar Panels shall not be taller than the fence line or visible from a Lot, common area or street.
- 2.3.6 The Reviewer may deny a request for the installation of Solar Panels if it determines that the placement of the Solar Panels, as proposed by the property owner, will create an interference with the use and enjoyment of land of neighboring owners.
- 2.3.7 Owners are hereby placed on notice that the installation of Solar Panels may void or adversely affect roof warranties. Any installation of Solar Panels which voids material warranties is not permitted and will be cause for the Solar Panels to be removed by the owner.
- 2.3.8 Solar Panels must be properly maintained at all times or removed by the owner.
- 2.3.9 Solar Panels which become non-functioning or inoperable must be removed by the

owner of the property.

#### **SECTION 2.4 EXTERIOR WALLS**

- 2.4.1 **Exterior Wall Materials:** Exterior walls shall be masonry and exterior-grade siding materials as those terms are defined by Section 146-139 of the City of McKinney Zoning Ordinance:
- 2.4.1.1 **Front Walls:** All front wall surfaces shall be full (100%) masonry, except siding may be used for hidden or concealed wall surfaces not directly visible from the lot front property line. Siding can be used in limited quantities for upper gable areas that would create a "brick-on-wood" condition; this provision is for special conditions only and is not intended to reduce the essential 100% masonry requirement for the front wall areas and approval of the use of this provision is at the sole discretion of the Reviewer and the City of McKinney.
  - 2.4.1.2 **Side Walls:** Side wall surfaces may be constructed using a mixture of masonry and exterior-grade siding as required to comply with the minimum seventy five percent (75%) masonry overall requirement;
  - 2.4.1.3 **Rear Walls:** Rear wall surfaces of the first floor may be constructed using a mixture of masonry and exterior-grade siding as required to comply with the minimum seventy five percent (75%) masonry overall requirement; second floor wall surfaces may be exterior-grade siding materials.
  - 2.4.1.4 **Chimneys:** Chimney wall structures that are a direct extension of an exterior wall shall match the requirement of said wall.
  - 2.4.1.5 **Required masonry percentages** shall be calculated excluding exterior wall areas built on top of a roof.

#### **SECTION 2.5 ELEVATION AND BRICK USAGE**

- 2.5.1 **Same Plan with Same Elevation:** The repeat of the same floor plan with the same elevation design shall be governed by the following provisions:
- 2.5.1.1 **Same Side of Street:** When dwelling units, using the same floor plan and same elevation, are constructed on the same side of the street, they shall be separated by a minimum of two (2) lots. A one (1) lot separation will be permitted when a street intersection occurs, the street right-of-way serves as a lot equivalent.
  - 2.5.1.2 **Opposite Side of Street:** When dwelling units, using the same floor plan and same elevation, are constructed on opposite sides of the street, they shall not be constructed directly or diagonally across from each other.

- 2.5.2 Repeat Brick Usage: All Dwelling submittals shall calculate the percentage coverage for each material as follows:
- 2.5.2.1 Same Side of Street: No combination of brick color, mortar color, and sand color shall be repeated for adjacent dwellings. Street and alley intersections are acceptable separation elements.
- 2.5.2.2 Opposite Side of Street: There are no restrictions for the use of brick color, mortar color, and sand color for dwelling units on opposing sides of the street.
- 2.5.2 Exterior Material Area Calculations: All Dwelling submittals shall calculate the percentage coverage for each material as follows:
- 2.5.2.1 Calculation Method: Calculations for material coverage percentages shall include all exposed areas of the wall surface, excluding window and door openings.
- 2.5.2.2 Calculation Format: Calculations shall indicate the area coverage for front, side, and rear wall areas. Calculations shall be submitted in the following format:

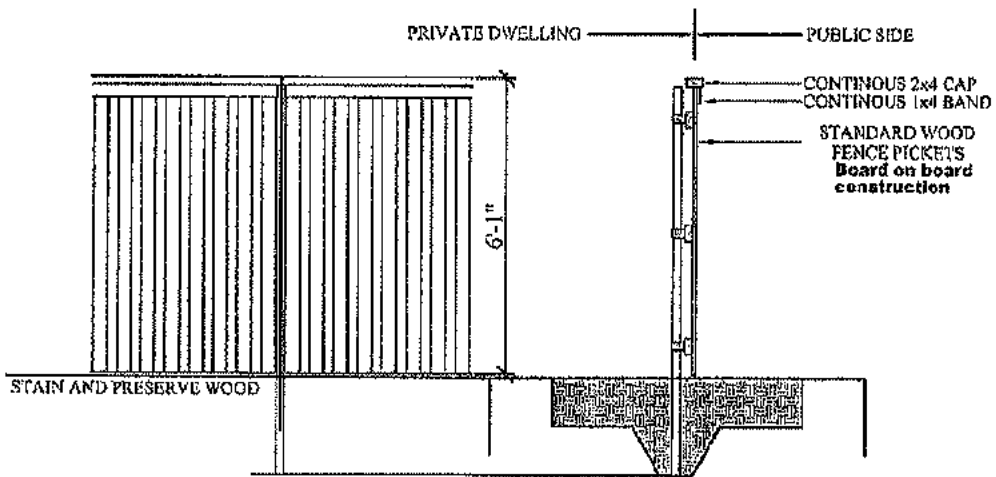
**Brick Calculations**

<b>Overall</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
<b>Front</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
<b>Left</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
<b>Right</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%
<b>Rear</b>	
Total Wall Area	0 sf
Total Brick Area	0 sf
Total Brick Percentage	0%

\*\* Openings removed from areas in all calculations

Exhibit Attachment 1.2.1.1 - Fencing on corner lots and backing up to major thoroughfare  
Exhibit Attachment 1.2.2.1 - Standard Side and Rear Yard Fences  
Exhibit Attachment 1.2.3.2 - Greenbelt Area Side and Rear Yard Fences  
Exhibit Attachment 1.3.1.1 - Standard Mail Boxes Design

Exhibit Attachment 1.2.1.1 - Fencing on corner lots and backing up to major thoroughfare



**Stain Color:**

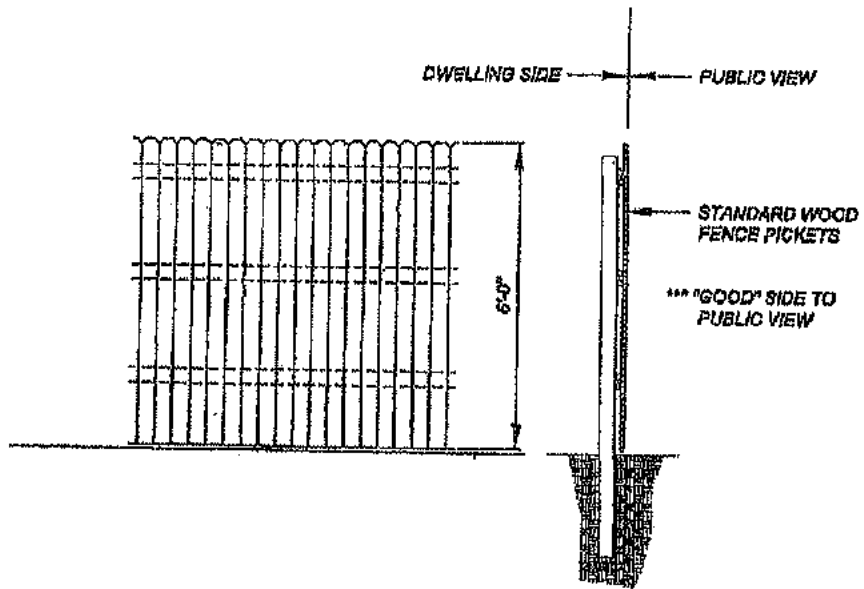
Manufacturers: Sherwin Williams  
 Manufacturers: Standard Paint  
 Manufacturers: Seal Rite

Color: Banyan Brown - Apply per product installation  
 Color: Sable Brown - Apply per product installation  
 Color: Medium Brown - Apply per product installation

**Attachment 1.2.1.1  
 Major Thoroughfare and Corner Lot  
 Fence Details**

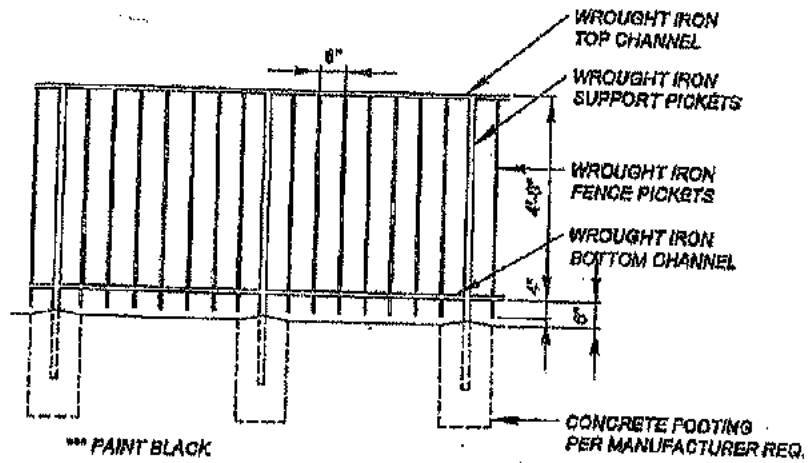
Exhibit Attachment 1.2.2.1  
Standard Side and Rear Yard Fences





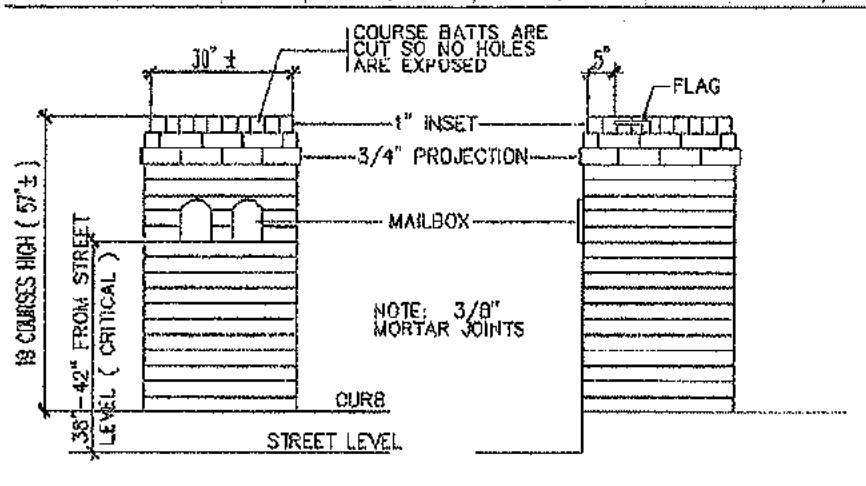
**ATTACHMENT: 1.2.2.1**  
**STANDARD LOT SIDE & REAR**  
**FENCE DETAILS**

**Exhibit Attachment 1.2.3.2  
Greenbelt Area Side and Rear Yard Fences**



**Attachment: 1.2.3.2**  
**WROUGHT IRON**  
**FENCE DETAILS**

Exhibit Attachment 1.3.1.1  
Standard Mail Boxes Design



Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
01/03/2013 01:34:43 PM  
\$288.00 DFOSTER  
20130103000015750



*Stacey Kemp*

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After recording, return to:  
Prestwyck Homeowner's Association, Inc.  
c/o Essex HOA Management  
Attention: Ron Corcoran  
1512 Crescent Drive, Suite 112  
Carrollton, Texas 75006

STATE OF TEXAS                    §  
  §       KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF COLLIN               §

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PRESTWYCK HOMEOWNERS ASSOCIATION, INC.**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PRESTWYCK HOMEOWNERS ASSOCIATION, INC. (this "Amendment") is made and entered by 206 McKinney, LLC, a Texas limited liability company (the "Declarant"), as of the 24<sup>th</sup> day of February, 2016, and joined by Lennar Homes of Texas Land and Construction, Ltd., a Texas limited partnership ("Lennar") for the purposes herein stated.

WHEREAS, on December 28, 2012, Declarant executed that certain Declaration of Covenants, Conditions and Restrictions for Prestwyck recorded on January 3, 2013, as Document No. 20130103000015750, in the Official Public Records of Collin County, Texas (the "Declaration"), which Declaration encumbers the real property described therein with the covenants, conditions and restrictions set out therein;

WHEREAS, a portion of the real property made subject to the Declaration included real property owned by Lennar; however, Lennar failed to execute the Declaration;

WHEREAS, pursuant to its rights as Declarant under the Declaration, including, without limitation, Section 7.1 of the Declaration, Declarant desires to amend and modify certain covenants, conditions and restrictions set forth in the Declaration, as more specifically provided in this Amendment; and

WHEREAS, Lennar desires to evidence its ratification of the Declaration as of December 28, 2012 for all purposes.

NOW, THEREFORE, Lennar, by its execution hereof hereby ratifies and affirms the Declaration with respect to the land owned by it at the time the Declaration was executed by Declarant on December 28, 2012 and effective as of such date and the date of recordation of the Declaration (the "Lennar Ratification"), and the Declarant does hereby amend the Declaration as follows:

Error! Unknown document property name.

1. Defined Terms. Unless otherwise defined in this Amendment or the context otherwise requires, each term used in this Amendment with its initial letter capitalized which has been specifically defined in the Declaration shall have the same meaning herein as given to such term in the Declaration.

2. Amendments. (a) The definition of "Association" in Article I, Paragraph (b) of the Declaration is hereby modified and amended to read in its entirety as follows:

"(b) "Association" shall mean and refer to Prestwyck Homeowner's Association, Inc., a Texas non-profit corporation, whose Certificate of Formation is attached hereto as Exhibit D, as may be modified and amended from time to time in accordance with the terms thereof, and which shall have the rights to enforce certain provisions of this Declaration, as more specifically provided herein"

(b) The definition of "Bylaws" in Article I, Paragraph (e) of the Declaration is hereby modified and amended to read in its entirety as follows:

"(e) "Bylaws" shall mean and refer to the Bylaws of the Association, the a copy of which are attached hereto as Exhibit D, as may be modified and amended from time to time in accordance with the terms thereof."

(c) The Declaration is hereby modified and amended to add a new Exhibit D entitled "Association Documents", which shall be the same as Exhibit D attached hereto and incorporated herein by reference

(d) The definition of "Common Properties" in Article I, Paragraph (f) of the Declaration is hereby modified and amended to read in its entirety as follows:

"(f) "Common Properties" shall mean all real property (including improvements thereon) and/or personal property, fixtures and equipment, now or hereafter owned, leased or controlled by the Association, or to which the Association holds possessory or use rights or maintenance obligations, for the common use and enjoyment of the Owners (hereinafter defined) including, but not limited to such property which may be: (i) conveyed to the Association in fee simple title, (ii) leased to the Association, (iii) landscape or maintenance easements granted or dedicated to the Association by plat or other written instrument, (iv) retention ponds within the Property, and (v) any other real property or improvement thereon, or personal property, fixtures or equipment that the Association, at the sole discretion of the Board, decides to maintain. Common Properties shall also mean and include all areas of land identified on any plat containing the Property filed with and approved by the City of McKinney, Texas and/or any Final Plat (hereinafter defined) as "Common Areas" or as being dedicated to or to be maintained by the Association, including, without limitation, those areas of land described as Common Properties on Exhibit A-1. The list of Common Properties on Exhibit A-1 is intended to illustrate examples of Common Properties and under no circumstance shall such list impose any obligation on the Declarant or the Association to purchase, install or construct any such features or amenities. The Common Properties may hereafter include any

neighborhood parks or other improvements or land conveyed to or leased by the Association for the use and benefit of the Owners”

(e) The definition of “Final Plat” in Article I, Paragraph (k) of the Declaration is hereby modified and amended to read in its entirety as follows:

“(k) “Final Plat” means any of the maps or plat described on Exhibit A-1 attached hereto and incorporated herein by reference, and any future recorded subdivision maps or plats covering the Property or additional real property made subject to this Declaration, as such Final Plats may be amended from time to time.”

(f) The Declaration is hereby modified and amended to add Exhibit A-1 “Final Plats of the Property and Description of Common Areas” attached hereto and incorporated herein by reference as a new Exhibit A-1 to the Declaration.

(g) The definition of “Prestwyck” or “Property” in Article I, Paragraph (p) of the Declaration is hereby modified and amended to read in its entirety as follows:

“(p) “Prestwyck” or “Property” shall mean and refer to the real property described on Exhibit A and Exhibit B, any improvements now or hereafter situated thereon, and any and all additional real property (and the improvements thereon) which Declarant subjects to this Declaration, in accordance with Article XIV hereof.”

(h) The definition of “Supplemental Declaration” in Article I, Paragraph (r) of the Declaration is hereby modified and amended to read in its entirety as follows:

“(r) “Supplemental Declaration” shall mean a recorded declaration which accomplishes one or more of the following purposes: (i) subjects additional real property to this Declaration, or (ii) imposes, expressly or by reference, additional restrictions, covenants, easements and/or rights and obligations on the land described, or (iii) has been filed in accordance with the terms of Article XIV hereof.”

(i) Section 2.5(a) of the Declaration is hereby modified and amended to read in its entirety as follows:

“(a) No temporary dwelling, shop, storage building, trailer or mobile home of any kind or any improvement of a temporary, character shall be permitted on any Lot except (i) children's playhouses up to ten feet (10') in height, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, which may be placed on a Lot subject to approval in accordance with Article III and provided no part of any such structure is visible from any front or side street (other than children's playhouses approved in accordance with Article III that may be up to ten feet [10'] in height, which may be visible from front or side streets), and provided that any improvement installed on a Lot by an Owner pursuant Section 2.5(a)(i) that is not maintained by such Owner in accordance with the requirements of Section 5.2 of this Declaration may be removed by the Association upon thirty (30) days' prior written notice delivered to such Owner, and (ii) the Builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a given Lot during construction of the residence on that Lot

or on a different Lot as agreed to between the Builder or contractor and Declarant and/or as otherwise set out in the Design Guidelines. No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected."

(j) The first sentence of Section 4.1 is hereby modified and amended to read in its entirety as follows:

"Declarant and/or the Association shall have the right, but not the obligation, to erect, install maintain, repair and/or replace fences, walls and/or screening landscaping within the landscaping, wall and screening fence maintenance easements or wall maintenance easements, or similar easements established by any Final Plat of the Property or by separate instrument and within the Common Properties."

(k) Section 4.4 of the Declaration is hereby modified and amended to read in its entirety as follows:

"Section 4.4 Declarant's and the Association's Discretion.

" Notwithstanding any provisions herein to the contrary, Declarant shall have no obligation by this Declaration to erect, install, maintain, repair or replace any fences, walls, sprinkler systems, grading, planting or landscaping within the Common Properties, whether initially installed by Declarant or the Association. The Association shall maintain, repair and/or replace any fences, walls, sprinkler systems, grading, planting or landscaping within any landscaping, wall and screening fence maintenance easements or wall maintenance easements, or similar easements established by any Final Plat of the Property and/or within the Common Properties or as otherwise expressly required herein, but shall have no obligation by this Declaration with respect to other similar improvements within the Property that are not part of the Common Properties."

(l) Section 9.1 of the Declaration is hereby modified and amended to read in its entirety as follows:

"Section 9.1 Initial Common Properties.

" The Initial Common Properties shall include all areas of land identified on any plat containing the Property filed with and approved by the City of McKinney, Texas and/or the Final Plats as "Common Areas" or as being dedicated to or to be maintained by the Association, which include any and all Common Properties described on Exhibit A-1 attached hereto and incorporated herein by reference. The Common Properties may include within such land identified as "Common Area" or as part of the Common Properties (whether by plat or separate instrument), but are not limited to, and by way of illustration only, all aspects of the entry features, entry monuments and walls, landscaping, irrigation for same and the land on which such entry features are situated, retention ponds, screening walls, pocket parks, a clubhouse and associated recreational



amenity, gates, fences, fountains and other structures, whether or not shown on a Final Plat, or as deemed necessary by Declarant, each as may be leased, maintained or owned by the Association. The foregoing list is intended to illustrate examples of Common Properties and under no circumstance shall such list impose any obligation on the Declarant or the Association to purchase, install or construct any such features or amenities. The Common Properties may hereafter include any neighborhood parks or other improvements or land conveyed to or leased by the Association for the use and benefit of the Owners."

(m) The reference to "Frisco Hills" in Section 12.5 of the Declaration is hereby modified and amended to read "Prestwyck".

3. No Other Effect. Except as expressly modified, amended and supplemented by this Amendment, the terms and provisions of the Declaration are not amended, modified or supplemented, and the Declaration, as modified, amended and supplemented hereby, is hereby amended as provided herein.

4. Severability. Invalidation of anyone provision of this Amendment by judgment or court order shall in no way affect any other provision of this Amendment or the remainder of this Amendment which shall remain in full force and effect. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Amendment a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

5. Headings. The headings contained in this Amendment are for reference purposes only and shall not in any way affect the meaning or interpretation of this Amendment.

REMAINDER OF PAGE LEFT BLANK - SIGNATURE PAGE FOLLOWS

EXECUTED to be effective as of the date written above.

DECLARANT:

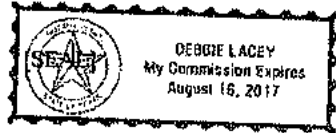
206 MCKINNEY, LLC,  
a Texas limited liability company

By: [Signature]  
Name: Mustafa Mohamed  
Its: Manager

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared MUSTAFA MOHAMED, the MANAGER of 206 McKinney, LLC, a Texas limited liability company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said limited liability company, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this 9th day of FEBRUARY, 2015.



[Signature]  
Notary Public, State of Texas



**EXHIBIT A-1**

**Final Plats of the Property and Description of Common Areas**

The Property shall include all of that land described in the following maps and/or plats filed in the Official Public Records of Collin County, Texas, as indicated:

<b>Plat Title</b>	<b>Recording Reference</b>	<b>Acreage</b>
Recorded Plat Parcel 1709 and 1710A	Cabinet 2013, Page 31	16.039 acres
Record Plat Parcel 1708	Cabinet 2013, Page 35	16.492 acres
Record Plat Parcel 1704, Phase 1	Cabinet 2013, Page 361	16.948 acres
Record Plat Parcel 1704, Phase 2	Cabinet 2014, Page 259	12.888 acres
Record Plat Parcel 1704, Phase 3	Cabinet 2015, Page 541	11.381 acres
Record Plat Parcel 1707	Cabinet 2014, Page 388	17.878 acres
Record Plat 1707	Cabinet 2014, Page 388	17.878 acres
Record Plat 1705	Not yet filed; Preliminary approved Final Record Plat Attached	24.861 acres
Record Plat Parcel	Not yet filed; Preliminary approved Final Record Plat Attached	27.480 acres

The Common Properties, shall include all of that land located within the Lots and Blocks shown on the Final Plats described as follows:

<b>Lot</b>	<b>Block</b>	<b>Plat</b>
Common Area S-1	Block S	Recorded Plat Parcel 1709 and 1710A
Common Area R-1	Block R	Recorded Plat Parcel 1709 and 1710A
Common Area A-1	Block A	Record Plat Parcel 1708
Common Area B-1	Block B	Record Plat Parcel 1708
Common Area K-2	Block K	Record Plat Parcel 1704, Phase 1
Common Area L-1	Block L	Record Plat Parcel 1704, Phase 1
Common Area P-1	Block P	Record Plat Parcel 1704, Phase 1
Common Area K-3	Block K	Record Plat Parcel 1704, Phase 2
Common Area L-2	Block L	Record Plat Parcel 1704, Phase 2
Common Area K-4	Block K	Record Plat Parcel 1704, Phase 3
Common Area L-3	Block L	Record Plat Parcel 1704, Phase 3
Common Area A-2	Block A	Record Plat Parcel 1707
Common Area D-1	Block D	Record Plat Parcel 1707
Common Area E-1	Block E	Record Plat Parcel 1707
Common Area F-2	Block F	Record Plat Parcel 1705
Common Area G-2	Block G	Record Plat Parcel 1705
Common Area K-1	Block K	Record Plat Parcel 1705

Common Area E-1	Block E	Record Plat Parcel 1706
Common Area F-1	Block F	Record Plat Parcel 1706
Common Area G-1	Block G	Record Plat Parcel 1706

*[Preliminary final Record Plats for Parcels 1705 and 1706 follows]*

EXHIBIT "A"

Being a 206.00 acre tract of land situated in the William McCarty Survey, Abstract No. 575, Collin County, Texas, and being a portion of that certain called 128.769 acre tract of land conveyed to Blue Star Land, L.P., as recorded in Volume 5132, Page 3914, Deed Records, Collin County, Texas, and being a portion of that certain called 110.140 acre tract of land conveyed in deed to Blue Star Land, L.P., as recorded in Volume 5026, Page 4363, said Deed Records, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod set for the most northerly northwest corner of Blue Star Land tract (Vol. 5132, Pg. 3914), same being the north end of a corner clip at the intersection of the south right-of-way line of U.S. Highway 380 (a variable width right-of-way) with Colt Road (County Road 72);

THENCE South 89 deg. 27 min. 24 sec. East, along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and the south right-of-way line of said U.S. Highway 380, a distance of 1859.38 feet to a 1/2 inch iron rod set for the POINT OF BEGINNING;

THENCE South 89 deg. 27 min. 24 sec. East, continuing along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and the south right-of-way line of said U.S. Highway 380, passing at a distance of 58.24 feet a 5/8 inch iron rod found, and continuing along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914), and the south right-of-way line of said U.S. Highway 380, a total distance of 198.79 feet to a TXDOT Monument found for corner, said point being the northeast corner of said Blue Star Land tract (Vol. 5132, Pg. 3914), same being the northwest corner of aforesaid called 110.140 acre Blue Star Land tract (Volume 5026, Pg. 4363);

THENCE along the common line of said Blue Star Land tract (Vol. 5026, Pg. 4363) and the south right-of-way line of said U.S. Highway 380 as follows:

South 89 deg. 26 min. 13 sec. East, a distance of 1633.50 feet to a 5/8 inch iron rod with "Pogue Eng." cap found for corner;

South 84 deg. 04 min. 11 sec. East, a distance of 200.45 feet to a 1/2 inch iron rod set for corner;

South 89 deg. 26 min. 42 sec. East, a distance of 315.77 feet to a TXDOT monument found for corner, said point being the northeast corner of said Blue Star Land tract (Vol. 5026, Pg. 4363), same being the northwest corner of Block A, of the Red Bud Estates, Phase II, an Addition to Collin County, Texas, according to the plat thereof recorded in Cabinet C, Page 517, Plat Records, Collin County, Texas;

THENCE South 90 deg. 15 min. 41 sec. West, along the common line of said Blue Star Land tract (Vol. 5026, Pg. 4363) and said Block A, passing a 5/8 inch iron rod found at the southwest corner of said Block A, same being the northwest corner of Block A, of the Red Bud Estates, Phase I, an Addition to Collin County, Texas, according to the plat thereof recorded in Cabinet C, Page 189, said Plat Records and continuing along the common line of said Blue Star Land tract (Vol. 5026, Pg. 4363), and said Block A (Cab. C, Pg. 189), a

total distance of 2777.13 feet to a 1/2 inch iron rod found for the southeast corner of said Blue Star Land tract (Vol. 5026, Pg. 4363), same being the southwest corner of said Block A (Cal. C, Pg. 189), same being in the north line of that certain tract of land conveyed in deed to D.R. Horton-Texas, Ltd., as recorded in Volume 6651, Page 37, said Dead Records, same being on the boundary line agreement as recorded in Volume 1024, Page 253;

THENCE North 89 deg. 42 min. 38 sec. West, along the common line of said Blue Star Land tract (Vol. 5026, Pg. 4363), and said D.R. Horton-Texas tract and along said boundary line agreement, passing the southwest corner of said Blue Star Land tract (Vol. 5026, Pg. 4363), same being the southeast corner of aforesaid Blue Star Land tract (Vol. 5132, Pg. 3914), and continuing along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and said D.R. Horton-Texas tract, passing at a distance of 3780.28 a 1/2 inch iron rod found for an offset corner, and continuing a total distance of 3720.91 feet to a pin nail set for corner, said point being the southwest corner of said Blue Star Land tract (Vol. 5026, Pg. 3914), same being the northwest corner of said D.R. Horton-Texas tract, same being the approximate centerline of aforesaid Colt Road;

THENCE North 00 deg. 28 min. 50 sec. East, along the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914), and along the approximate centerline of said Colt Road, a distance of 2051.82 feet to a pin nail set for corner;

THENCE through the interior of said Blue Star Land tract (Vol. 5132, Pg. 3914) as follows:

South 89 deg. 27 min. 24 sec. East, a distance of 1016.03 feet to a 1/2 inch iron rod set for corner;

North 46 deg. 32 min. 52 sec. East, a distance of 178.89 feet to a 1/2 inch iron rod set for corner;

South 88 deg. 47 min. 53 sec. East, passing the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and aforesaid Blue Star Land tract (Vol. 5026, Pg. 4363) and continuing a total distance of 1684.36 feet to a 1/2 inch iron rod set for corner, said point being the beginning of a non-tangent curve to the right having a radius of 638.50 feet and a delta angle of 52 deg. 59 min. 02 sec.;

Along said non-tangent curve to the right passing the common line of said Blue Star Land tract (Vol. 5132, Pg. 3914) and said Blue Star Land tract (Vol. 5026, Pg. 4363) and continuing a total arc distance of 590.45 feet and a chord bearing and distance of North 24 deg. 50 min. 25 sec. West, 569.63 feet to a 1/2 inch iron rod set for corner;

North 01 deg. 36 min. 59 sec. East, a distance of 109.10 feet to a 1/2 inch iron rod set for corner;

North 43 deg. 54 min. 12 sec. West, a distance of 35.70 feet to the POINT OF BEGINNING and containing 3,973,343 square feet or 205.00 acres of computed land.

SAVE AND EXCEPT THE FOLLOWING TWO TRACTS DESCRIBED ON THE FOLLOWING PAGES:

**SAVE AND EXCEPT THE FOLLOWING 41.267 ACRE TRACT DESCRIBED AS:**

ALL that certain tract or parcel of land situated in the WILLIAM MCCARTY SURVEY, ABSTRACT NUMBER 676, in the City of McKinney, Collin County, Texas, being part of that certain called 206.00 acre tract described in a deed to 206 MCKINNEY, LLC, as recorded in Clerk's File Number 20100810000824670 of the Land Records of Collin County, Texas, the herein tract being more particularly described as follows:

COMMENCE at a 5/8" iron rebar found at the southwest corner of said 206 MCKINNEY tract, same being the northwest corner of a called 300.988 acre tract described as Planning Area 18 in a deed to D. R. HORTON-TEXAS, LTD., as recorded in Volume 0081, Page 37 of the Land Records of Collin County, Texas, which corner is in the center of County Road 72 (Colt Road), common with the west line of said McCarty Survey;

THENCE N 89°47'26" E, along the south line of said 206 MCKINNEY tract, same being the north line of said HORTON tract, a distance of 60.00 feet to a 1/2" capped iron rebar (PETROCHE & ASSOC., INC.) set at the POINT OF BEGINNING of the herein described tract of land;

THENCE N 00°01'14" W, parallel with and 60.00 feet easterly from the most southerly west line of said 206 MCKINNEY tract, common with said centerline of County Road 72 and west line of McCarty Survey, a distance of 1062.01 feet to a 1/2" capped iron rebar set for corner, same being the most westerly southwest corner of the proposed Planning Area 17 Collector Road, Phase 2;

THENCE along the south line of said proposed Planning Area 17 Collector Road, Phase 2, in an easterly direction the following seven (7) courses:

- 1.) N 44°33'11" E a distance of 36.41 feet to a 1/2" capped iron rebar set at an angle point;
- 2.) N 80°47'30" E a distance of 390.00 feet to a 1/2" capped iron rebar set at the point of curvature of a curve having a central angle of 4°46'18", a radius of 600.00 feet and a chord which bears N 67°22'58" E, 60.46 feet;
- 3.) along the arc of said curve to the left a distance of 60.46 feet to a 1/2" capped iron rebar set at the point of tangency of said curve;
- 4.) N 84°56'18" E a distance of 74.40 feet to a 1/2" capped iron rebar set at the point of curvature of a curve having a central angle of 4°46'18", a radius of 600.00 feet and a chord which bears 67°22'58" E, 60.46 feet;
- 5.) along the arc of said curve to the right a distance of 60.46 feet to a 1/2" capped iron rebar set at the point of tangency of said curve;
- 6.) N 88°47'36" E a distance of 626.98 feet to a 1/2" capped iron rebar set at point of curvature of a curve having a central angle of 28°14'59", a radius of 970.00 feet and a chord which bears S 76°04'54" E, 473.43 feet;
- 7.) along the arc of said curve to the right a distance of 476.28 feet to a 1/2" capped iron rebar set for corner at the northeast corner of the herein described tract of land;

THENCE along the east line of the herein described tract of land in a southerly direction the following two (2) courses:

- 1.) S 98°20'46" W a distance of 1026.70 feet to a 1/2" capped iron rebar set at an angle point;



2.) S 11°41'05" W a distance of 204.83 feet to a 1/2" capped iron rebar set at the southeast corner of the herein described tract of land, same being in the south line of said 200 McKINNEY tract, which line is the aforesaid north line of HORTON tract;

THENCE S 60°47'36" W, along said common line, a distance of 1295.86 feet to the POINT OF BEGINNING containing 41.267 acres (1,797,577 SQUARE FEET) of land, MORE OR LESS.

**SAVE AND EXCEPT THE FOLLOWING 13.3 ACRE TRACT DESCRIBED AS:**

WHEREAS 200McKINNEY, LLC, a Texas limited liability company, is the owner of a tract of land situated in the WILLIAM McCARTY SURVEY, ABSTRACT NUMBER 675, in the City of McKinney, Collin County, Texas, being part of a called 200.00 acre tract described in a deed to 200 McKINNEY, LLC, as recorded in Clerk's File Number 20100810000824670 of the Land Records of Collin County, Texas, the herein tract being more particularly described as follows:

COMMENCE at a nail previously set in brass disc (PETSCHKE & ASSOC., INC.) at the most westerly northwest corner of said 200 McKINNEY tract, same being the southwest corner of a 32.016 acre tract of land, which tract is the remaining portion of a called 238.92 acre tract described in deeds to BLUE STAR LAND, LP, as recorded in Volume 5020, Page 4303 and Volume 5132, Page 3914 of the Land Records of Collin County, Texas, which corner is in the west line of GOIT ROAD PHASE 3, according to the Record Plat thereof, as recorded in Volume 2012, Page 142 of the Plat Records of Collin County, Texas;

THENCE S 89°57'04" E along the most westerly north line of said 200 McKINNEY tract, same being the south line of said BLUE STAR tract, a distance of 60.00 feet to the POINT OF BEGINNING of the herein described tract of land, same being in the east line of said GOIT ROAD PHASE 3 (80 feet wide);

THENCE continue S 89°57'04" E along said common line, a distance of 955.88 feet to a 1/2" capped iron rebar (RPLS 3688) found for corner at an angle point in said line;

THENCE S 49°03'12" W, departing said common line a distance of 488.82 feet to a 1/2" capped iron rebar (PETSCHKE & ASSOC., INC.) set at an angle point;

THENCE S 06°12'24" E a distance of 633.09 feet to a 1/2" capped iron rebar set for corner in the north line of PRESTWICK HOLLOW DRIVE PHASE 2, according to the Record Plat thereof, as recorded in Volume 2012, Page 144 of the Plat Records of Collin County, Texas;

THENCE along said north line of PRESTWICK HOLLOW DRIVE PHASE 2, in a westerly direction the following eight (8) courses:

- 1.) S 88°47'39" W a distance of 17.44 feet to a 1/2" capped iron rebar (PETSCHKE & ASSOC., INC.) found at the point of curvature of a curve having a central angle of 4°49'18", a radius of 600.00 feet and a chord which bears N 87°47'48" W, 50.48 feet;
- 2.) along the arc of said curve to the right a distance of 50.49 feet to a 1/2" capped iron rebar (PETSCHKE & ASSOC., INC.) found at the point of tangency of said curve;
- 3.) N 88°23'05" W a distance of 74.40 feet to a 1/2" capped iron rebar (PETSCHKE & ASSOC., INC.) found at the point of curvature of a curve having a central angle of 4°49'18", a radius of 600.00 feet and a chord which bears N 87°47'48" W, 50.48 feet;
- 4.) along the arc of said curve to the left a distance of 50.49 feet to a 1/2" capped iron rebar (PETSCHKE & ASSOC., INC.) found at the point of tangency of said curve;
- 5.) S 89°47'36" W a distance of 89.70 feet to a 1/2" capped iron rebar (PETSCHKE & ASSOC., INC.) found at an angle point;

6.) N 85°37'57" W a distance of 150.48 feet to a 1/2 " capped iron rebar (PETSCHKE & ASSOC., INC.) found at an angle point;

7.) S 88°47'38" W a distance of 150.00 feet to a 1/2 " capped iron rebar (PETSCHKE & ASSOC., INC.) found at an angle point;

8.) N 45°08'48" W, at 19.77 feet pass a 1/2 " capped iron rebar (PETSCHKE & ASSOC., INC.) found at the most westerly northwest corner of said PRESTWICK HOLLOW DRIVE PHASE 2, same being an angle point in the aforefield east line of COIT ROAD PHASE 3, a total distance of 35.39 feet to a 1/2 " capped iron rebar (PETSCHKE & ASSOC., INC.) found for corner in said east line of COIT ROAD PHASE 3;

THENCE N 00°01'14" W along said line a distance of 828.30 feet to the POINT OF BEGINNING, containing 73.990 acres (579,362 SQUARE FEET), of land, MORE OR LESS.

Exhibit "B"  
Tract Legal Description

ALL that certain tract or parcel of land situated in the WILLIAM McCARTY SURVEY, ABSTRACT NUMBER 678, in the City of McKinney, Collin County, Texas, being part of that certain called 208.00 acre tract described in a deed to 208 MCKINNEY, L.L.C. as recorded in Clerk's File Number 20100810000824870 of the Land Records of Collin County, Texas, the herein tract being more particularly described as follows:

COMMENCE at a 5/8" iron rebar found at the southwest corner of said 208 MCKINNEY tract, same being the northwest corner of a called 368.380 acre tract described as Planning Area 15 in a deed to D. R. HORTON-TEXAS, LTD., as recorded in Volume 9081, Page 37 of the Land Records of Collin County, Texas, which corner is in the center of County Road 72 (Coll Road), common with the west line of said McCarty Survey;

THENCE N 88°47'38" E, along the south line of said 208 MCKINNEY tract, same being the north line of said HORTON tract, a distance of 60.00 feet to a 1/2" capped iron rebar (PETSCHKE & ASSOC., INC.) set at the POINT OF BEGINNING of the herein described tract of land;

THENCE N 00°01'4" W, parallel with and 60.00 feet easterly from the most southerly west line of said 208 MCKINNEY tract, common with said centerline of County Road 72 and west line of McCarty Survey, a distance of 1082.01 feet to a 1/2" capped iron rebar set for corner, same being the most westerly southwest corner of the proposed Planning Area 17 Collector Road, Phase 2;

THENCE along the south line of said proposed Planning Area 17 Collector Road, Phase 2, in an easterly direction the following seven (7) courses:

- 1.) N 44°53'11" E a distance of 35.41 feet to a 1/2" capped iron rebar set at an angle point;
- 2.) N 88°47'38" E a distance of 390.00 feet to a 1/2" capped iron rebar set at the point of curvature of a curve having a central angle of 4°48'18", a radius of 600.00 feet and a chord which bears N 87°22'58" E, 50.48 feet;
- 3.) along the arc of said curve to the left a distance of 50.48 feet to a 1/2" capped iron rebar set at the point of tangency of said curve;
- 4.) N 84°50'18" E a distance of 74.40 feet to a 1/2" capped iron rebar set at the point of curvature of a curve having a central angle of 4°48'18", a radius of 600.00 feet and a chord which bears 87°22'58" E, 50.48 feet;
- 5.) along the arc of said curve to the right a distance of 50.48 feet to a 1/2" capped iron rebar set at the point of tangency of said curve;
- 6.) N 88°47'38" E a distance of 926.88 feet to a 1/2" capped iron rebar set at point of curvature of a curve having a central angle of 28°14'58", a radius of 970.00 feet and a chord which bears S 78°04'54" E, 473.43 feet;
- 7.) along the arc of said curve to the right a distance of 473.28 feet to a 1/2" capped iron rebar set for corner at the northeast corner of the herein described tract of land;

THENCE along the east line of the herein described tract of land in a southerly direction the following two (2) courses:

- 1.) S 38°20'48" W a distance of 1028.70 feet to a 1/2" capped iron rebar set at an angle point;
- 2.) S 11°41'55" W a distance of 201.63 feet to a 1/2" capped iron rebar set at the southeast corner

of the herein described tract of land, some being in the south line of said 200 McKINNEY tract,  
which line is the aforesaid north line of HORTON tract;

THENCE S66°47'36" W, along said corner line, a distance of 1295.83 feet to the POINT OF BEGINNING  
containing 41.267 acres (1,797,577 SQUARE FEET) of land, MORE OR LESS.

EXHIBIT D  
ASSOCIATION DOCUMENTS

[SEE ATTACHED]

Form 202  
(Revised 05/11)

Submit in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512/463-5709  
Filing Fee: \$25



This space reserved for office use.

**Certificate of Formation  
Nonprofit Corporation**

**Article 1 - Entity Name and Type**

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

Prestwyck Homeowner's Association, Inc

**Article 2 -- Registered Agent and Registered Office**  
(See instructions. Select and complete either A or B and complete C.)

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

OR

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

Mehrdad Moayed  
First Name M.I. Last Name Suffix

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

1221 N. Interstate 35B Carrollton TX 75006  
Street Address City State Zip Code

**Article 3 -- Management**

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

*A minimum of three directors is required.*

Director 1				
<u>Mehrdad</u>		<u>Moayed</u>		
<small>First Name</small>	<small>M.I.</small>	<small>Last Name</small>	<small>Suffix</small>	
<u>1221 N. Interstate 35E</u>	<u>Carrollton</u>	<u>TX</u>	<u>75006</u>	<u>USA</u>
<small>Street or Mailing Address</small>	<small>City</small>	<small>State</small>	<small>Zip Code</small>	<small>Country</small>

<b>Director 2</b>				
Brad		Biber		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
1221 N. Interstate 35E	Carrollton	TX	75006	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

<b>Director 3</b>				
Steve		Lenart		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
1221 N. Interstate 35E	Carrollton	TX	75006	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

OR

The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

**Article 4 – Membership**

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

- A. The nonprofit corporation shall have members.
- B. The nonprofit corporation will have no members.

**Article 5 – Purpose**

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:

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*The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.*

**Supplemental Provisions/Information**  
(See instructions.)

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

**Organizer**

The name and address of the organizer:

Mehrdad Moayedi

*Name*

1221 N. Interstate 35E

Carrollton

TX

75006

*Street or Mailing Address*

*City*

*State*

*Zip Code*

**Effectiveness of Filing** (Select either A, B, or C.)

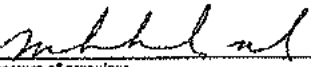
- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:

**Execution**

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

Date: 01/12/12

  
\_\_\_\_\_  
*Signature of organizer*

Mehrdad Moayedi  
\_\_\_\_\_  
*Printed or typed name of organizer*



BYLAWS OF  
PRESTWICK HOMEOWNERS ASSOCIATION, INC.

(a Texas association)

**PRESTWICK HOMEOWNERS ASSOCIATION, INC.**  
(a Texas association)

**ARTICLE 1**  
**INTRODUCTION**

1.1. **Property.** These Bylaws of PRESTWICK HOMEOWNERS ASSOCIATION, INC., provide for the governance of the neighborhood regime (the "Property") known as PRESTWICK, as more particularly described in that certain Declaration of Covenants, Conditions and Restrictions for PRESTWICK HOMEOWNERS ASSOCIATION INC. recorded in the Official Public Records of Collin County, Texas (the "Declaration").

1.2. **Parties to Bylaws.** All present or future Owners of Property and all other persons who use or occupy the Property in any manner are subject to these Bylaws, the Declaration, and the other Documents as defined in the Declaration. The mere acquisition or occupancy of the Property will signify that these Bylaws are accepted, ratified, and will be strictly followed.

1.3. **Definitions.** Words and phrases defined in the Declaration have the same meanings when used in these Bylaws. Article 1 of the Declaration is incorporated herein by reference.

1.4. **Nonprofit Purpose.** The Association is organized to be a nonprofit corporation.

1.5. **General Powers and Duties.** The Association, acting through the Board, has the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Property as may be required or permitted by the Documents and Texas law. The Association may do any and all things that are lawful and which are necessary, proper, or desirable in operating for the best interests of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Documents.

**ARTICLE 2**  
**BOARD OF DIRECTORS**

2.1. **Governance.** Until one hundred and twenty (120) days after ninety percent (90%) of the Properties which may be created pursuant to this Declaration have been conveyed to Owners other than the Declarant (the "90% Trigger Date"), the Board will consist of three (3) members appointed by the Declarant. On the 90% Trigger Date, the Board will be elected or appointed as follows: (i) two (2) members will be appointed by the Declarant; and (ii) one (1) member will be appointed by Property owners other than the Declarant. Not later than one hundred and twenty (120) days after ninety percent (90%) of the Properties which may be created pursuant to this Declaration have been conveyed to Owners other than the Declarant (the "90% Trigger Date"), the Board will

consist of a minimum of (3) members during the term of Declarant control, and shall be appointed as follows: (i) two (2) members will be appointed by the Declarant; and (ii) one (1) member will be appointed by Property owners other than the Declarant. After Declarant control, the board may consist of three (3) or a maximum of five (5) members and terms shall be staggered for continuity as follows: a three (3) person board shall consist of two seats with terms of two (2) years and one (1) seat with a term of one (1) year. The seats with two (2) year terms shall be those members receiving the highest number of votes. A board consisting of five (5) members shall have three (3) seats with a term of two (2) years and two (2) seats with a term of one (1) year. The seats with a two (2) year term shall be those with the highest votes. After Declarant control has ended the Board shall reserve the right to increase its members from a three (3) person to a five (5) person Board at any time.

2.2. Qualification. The following qualifications apply to the election or appointment of persons to the Board.

2.2.1. Owners. The directors must be Members of the Association or spouses of Members.

2.2.2. Entity Member. If a Property is owned by a legal entity, such as a partnership or corporation, any officer, partner, agent, or employee of that entity Member is eligible to serve as a director and is deemed to be a Member for the purposes of this Section. If the relationship between the entity Member and the director representing it terminates, that directorship will be deemed vacant.

2.2.3. Delinquency. No person may be elected or appointed as a director if any assessment against the person or his Property is delinquent at the time of election or appointment, provided he has been given notice of the delinquency and a reasonable opportunity to cure the delinquency.

2.2.4. Litigation. No person may be elected or appointed as a director if the person is a party adverse to the Association or the Board in pending litigation to which the Association or the Board is a party.

### 2.3. Meetings of the Board.

2.3.1. Organizational Meeting of the Board. Within sixty (60) days after the annual meeting, the directors will convene an organizational meeting for the purpose of electing officers. The time and place of the meeting will be fixed by the Board and announced to the directors.

2.3.2. Regular Meetings of the Board. Regular meetings of the Board may be held at a time and place that the Board determines, from time to time, but at least one (1) such meeting must be held annually. Notice of regular meetings of the Board will be given to each director, personally or by telephone, written, or electronic communication, at least three (3) days prior to the date of the meeting.

2.3.3. Special Meetings of the Board. Special meetings of the Board may be called by the president or, if he is absent or refuses to act, by the secretary, or by any two (2) directors. At least three (3) days notice will be given to each director, personally or by telephone, written, or electronic communication, which notice must state the place, time, and purpose of the meeting.

2.3.4. Emergency Meetings. In case of emergency, the Board may convene a meeting after making a diligent attempt to notify each director by any practical method.

2.3.5. Conduct of Meetings. The president presides over meetings of the Board and the secretary keeps, or causes to be kept, a record of resolutions adopted by the Board and a record of transactions and proceedings, occurring at meetings.

2.3.6. Quorum. At meetings of the Board, a Majority of directors constitutes a quorum for the transaction of business, and the acts of the Majority of the directors present at a meeting at which a quorum is present are the acts of the Board. If less than a quorum is present at a meeting of the Board, the Majority of those present may adjourn the meeting from time to time. At any reconvened meeting at which a quorum is present, any business that may have been transacted at the meeting as originally called may be transacted without further notice. Directors may not participate by proxy at meetings of the Board.

2.3.7. Telephone Meetings. Members of the Board or any committee of the Association may participate in and hold meetings of the Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting constitutes presence in person at the meeting, except where 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.

2.3.8. Action without a Meeting. Any action required or permitted to be taken by the Board at a meeting may be taken without a meeting, if all directors individually or collectively consent in writing to such action. The written consent must be filed with the minutes of Board meetings. Action by written consent has the same force and effect as a unanimous vote. This Section does not apply to actions that require meetings under the Act.

2.4. Liabilities and Standard of Care. In performing their duties, the directors are required to exercise certain standards of care and are subject to certain liabilities, including but not limited to the following provisions of State law: Section 82.103(a) and (f) of the Act, and Sections 3.102, 3.105, 22.221, 22.223, 22.224, 22.225, 22.226, 22.227 and 22.230 of the Texas Business Organizations Code.

2.5. Powers and Duties. The Board has all the powers and duties necessary for the administration of the Association and for the operation and maintenance of the Property. The Board may do all acts and things except those which, by law or the Documents, are reserved to the Members and may not be delegated to the Board. Without prejudice to the general and specific powers and duties set forth in laws or the Documents, or powers and duties as may hereafter be imposed on the Board by resolution of the Association, the powers and duties of the Board include, but are not limited to, the following:

2.5.1. Appointment of Committees. The Board, by resolution, may from time to time designate standing or ad hoc committees to advise or assist the Board with its responsibilities. The resolution may establish the purposes and powers of the committee created, provide for the appointment of a chair and committee Members, and may provide for reports, termination, and other administrative matters deemed appropriate by the Board. Members of committees will be appointed from among the Owners and residents.

2.5.2. Manager. The Board may employ a manager or managing agent for the Association, at a compensation established by the Board, to perform duties and services authorized by the Board.

### **ARTICLE 3**

#### **OFFICERS**

3.1. Designation. The principal officers of the Association are the president, the secretary, and the treasurer. The Board may appoint one (1) or more vice-presidents and other officers and assistant officers as it deems necessary. The president and secretary must be directors. Other officers must be Members. Any two (2) offices may be held by the same person, except the offices of president and secretary. If an officer is absent or unable to act, the Board may appoint a director to perform the duties of that officer and to act in place of that officer, on an interim basis.

3.2. Election of Officers. The officers are elected no less than annually by the directors at the organizational meeting of the Board and hold office at the pleasure of the Board. Except for resignation or removal, officers hold office until their respective successors have been designated by the Board.

3.3. Removal and Resignation of Officers. A Majority of directors may remove any officer, with or without cause, at any regular meeting of the Board or at any special meeting of the Board called for that purpose. A successor may be elected at any regular or special meeting of the Board called for that purpose. An officer may

resign at any time by giving written notice to the Board. Unless the notice of resignation states otherwise, it is effective when received by the Board and does not require acceptance by the Board. The resignation or removal of an officer who is also a director does not constitute resignation or removal from the Board.

3.4. Standard of Care. In performing their duties, the officers are required to exercise the standards of care provided by Section 82.103(a) and (f) of the Act and by Section 3.105 of the Texas Business Organizations Code.

3.5. Description of Principal Offices.

3.5.1. President. As the chief executive officer of the Association, the president: (i) presides at all meetings of the Association and of the Board; (ii) has all the general powers and duties which are usually vested in the office of president of a corporation organized under the laws of the State of Texas; (iii) has general supervision, direction, and control of the business of the Association, subject to the control of the Board; and (iv) sees that all orders and resolutions of the Board are carried into effect.

3.5.2. Secretary. The secretary: (i) keeps the minutes of all meetings of the Board and of the Association; (ii) has charge of such books, papers, and records as the Board may direct; (iii) maintains a record of the names and addresses of the Members for the mailing of notices; and (iv) in general, performs all duties incident to the office of secretary.

3.5.3. Treasurer. The treasurer: (i) is responsible for Association funds; (ii) keeps full and accurate financial records and books of account showing all receipts and disbursements; (iii) prepares all required financial data and tax returns; (iv) deposits all monies or other valuable effects in the name of the Association in depositories as may from time to time be designated by the Board; (v) prepares the annual and supplemental budgets of the Association; (vi) reviews the accounts of the managing agent on a monthly basis in the event a managing agent is responsible for collecting and disbursing Association funds; and (vii) performs all the duties incident to the office of treasurer.

3.6. Authorized Agents. Except when the Documents require execution of certain instruments by certain individuals, the Board may authorize any person to execute instruments on behalf of the Association. In the absence of Board designation, the president and the secretary are the only persons authorized to execute instruments on behalf of the Association.

**ARTICLE 4**  
**MEETINGS OF THE ASSOCIATION**

4.1. Annual Meeting. An annual meeting of the Association will be held annually on a date and time specified by the Board. At annual meetings the Members will transact such business of the Association as may properly come before them.

4.2. Special Meetings. It is the duty of the president to call a special meeting of the Association if directed to do so by a Majority of the Board or by a petition signed by Owners of at least fifty percent (51%) of the Properties. The meeting must be held within thirty (30) days after the Board resolution or receipt of petition. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

4.3. Place of Meetings. Meetings of the Association may be held at the Property or at a suitable place convenient to the Members, as determined by the Board.

4.4. Notice of Meetings. At the direction of the Board, written notice of meetings of the Association will be given to an Owner of each Property at least ten (10) days but not more than sixty (60) days prior to the meeting. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the particular purpose of a special meeting. Notices may also set forth any other items of information deemed appropriate by the Board.

4.5. Ineligibility. The Board may determine that no Member may vote at meetings of the Association if the Member's financial account with the Association is in arrears forty-five (45) days before the date of a meeting of the Association at which Members will vote, provided each ineligible Member is given notice of the arrearage and an opportunity to become eligible. The Board may specify the manner, place, and time for payment for purposes of restoring eligibility. A determination of Members entitled to vote at a meeting of the Association is effective for any adjournment of the meeting, provided the date of the adjourned meeting is not more than forty-five (45) days after the original meeting.

4.6. Voting Members List. The Board will prepare and make available a list of the Association's voting Members in accordance with Section 22.158(b) of the Texas Business Organizations Code.

4.7. Quorum. At any meeting of the Association, the presence in person or by proxy of Members representing at least thirty percent (30%) of the Properties in the Property constitutes a Regular Quorum. The presence in person or by proxy of Members representing at least sixty (60%) of the Properties in the Property constitutes a Special Quorum. Members present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal, during the course of the meeting, of Members constituting a quorum.

4.8. Lack of Quorum. If a quorum is present at no time during a properly called meeting, a majority of the Members present, although not constituting a quorum, may vote to adjourn the meeting and reconvene with no further notice

required. At the reconvened meeting pursuant to this provision, Members constituting a Regular Quorum and Special Quorum will be reduced to one-half (1/2) of the required Regular Quorum and Special Quorum at the preceding meeting; provided however, that such preceding meeting is held not later than thirty (30) days after the first (1<sup>st</sup>) meeting.

4.9. Votes. The vote of Members representing at least a Majority of the votes cast at any meeting at which a quorum is present binds all Members for all purposes, except when a higher percentage is required by these Bylaws, the Declaration, or by law. Cumulative voting is prohibited.

4.9.1. Co-Owned Properties. If a Property is owned by more than one Member, the vote appurtenant to that Property is cast in accordance with Section 82.110(a) of Act, which is summarized as follows. If only one of the multiple Owners of a Property is present at a meeting of the Association, that person may cast the vote allocated to that Property. If more than one of the multiple Owners is present, the vote allocated to that Property may be cast only in accordance with the Owners' unanimous agreement. Multiple Owners are in unanimous agreement if one of the multiple Owners casts the vote allocated to a Property and none of the other Owners makes prompt protest to the person presiding over the meeting.

4.9.2. Corporation-Owned Properties. If a Property is owned by a corporation, the vote appurtenant to that Property may be cast by any officer of the corporation in the absence of the corporation's written appointment of a specific person to exercise its vote. The vote of a partnership may be cast by any general partner in the absence of the partners' written appointment of a specific person. The person presiding over a meeting or vote may require reasonable evidence that a person voting on behalf of a corporation or partnership is qualified to vote.

4.9.3. Association-Owned Properties. Votes allocated to a Property owned by the Association may be counted towards a quorum and for all ballots and votes except the election or removal of directors. The vote appurtenant to a Property owned by the Association is exercised by the Board.

4.10. Proxies. Votes may be cast in person or by written proxy. To be valid, each proxy must: (i) be signed and dated by a Member or his attorney-in-fact; (ii) identify the Property to which the vote is appurtenant; (iii) name the person or title (such as "presiding officer") in favor of whom the proxy is granted, such person having agreed to exercise the proxy; (iv) identify the meeting for which the proxy is given; (v) not purport to be revocable without notice; and (vi) be delivered to the secretary, to the person presiding over the Association meeting for which the proxy is designated, or to a person or company designated by the Board. Unless the proxy specifies a shorter or longer time, it terminates eleven (11) months after the date of its execution. To revoke a proxy, the granting Member must give actual notice of revocation to the



person presiding over the Association meeting for which the proxy is designated. Unless revoked, any proxy designated for a meeting which is adjourned, recessed, or rescheduled is valid when the meeting reconvenes. A proxy may be delivered by email or fax. However, a proxy received by email or fax may not be counted to make or break a tie-vote unless the proxy has been acknowledged or sworn to by the Member, before and certified by an officer authorized to take acknowledgments and oaths.

4.11. Conduct of Meetings. The president, or any person designated by the Board, presides over meetings of the Association. The secretary keeps, or causes to be kept, the minutes of the meeting which should record all resolutions adopted and all transactions occurring at the meeting, as well as a record of any votes taken at the meeting.

4.12. Order Of Business. Unless the notice of meeting states otherwise, or the assembly adopts a different agenda at the meeting, the order of business at meetings of the Association is as follows:

- Determine votes present by roll call or check-in procedure
- Announcement of quorum
- Proof of notice of meeting
- Approval of minutes of preceding meeting
- Reports of Officers (if any)
- New Business
- Unfinished or old business

4.13. Adjournment of Meeting. At any meeting of the Association, a Majority of the Members present at that meeting, either in person or by proxy, may adjourn the meeting, to another time and place.

4.14. Action without Meeting. Subject to Board approval, any action which may be taken by a vote of the Members at a meeting of the Association may also be taken without a meeting by written consents. The Board may permit Members to vote by any method allowed by Section 22.160(b)(c) and (d) of the Texas Business Organizations Code, which may include hand delivery, mail, fax, email, or any combination of these. Written consents by Members representing at least a Majority of votes in the Association, or such higher percentage as may be required by the Documents, constitutes approval by written consent. This Section may not be used to avoid the requirement of an annual meeting and does not apply to the election of directors.

## **ARTICLE 5**

### **RULES**

5.1. Rules. The Board has the right to establish and amend, from time to time, reasonable rules and regulations for: (i) the administration of the Association and the Documents; (ii) the maintenance, management, operation, use, conservation, and

beautification of the Property; and (iii) the health, comfort, and general welfare of the residents; provided, however, that such rules may not be in conflict with law or the Documents. The Board will, at all times, maintain the then current and complete rules in a written form which can be copied and distributed to the Members.

5.2. Adoption and Amendment. Any rule may be adopted, amended, or terminated by the Board, provided that the rule and the requisite Board approval are properly recorded as a resolution in the minutes of the meeting of the Board.

5.3. Distribution. On request from any Member or resident, the Board will provide a current and complete copy of rules. Additionally, the Board will, from time to time, distribute copies of the current and complete rules to Owners through the web or internet by posting on the Association's web page or pages and, if the Board so chooses, to non-Member residents.

## ARTICLE 6 ENFORCEMENT

6.1. Remedies. The violation of any provision of the Documents gives the Board the following rights, in addition to any other rights set forth in the Documents:

6.1.1. Fines. To impose reasonable fines, if notice and an opportunity to be heard are given.

6.1.2. Self-Help. After notice and an opportunity to be heard are given, except in case of an emergency, to enter the Property or Common Element in which, or as to which, The violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition (except for additions or alterations of a permanent nature that may exist in that Property) that is contrary to the intent and meaning of the provisions of the Documents. The Board may not be deemed liable for any manner of trespass by this action.

6.1.3. Courts. To enjoin, abate, or remedy, by appropriate legal proceedings, the continuance of any breach.

6.2. Notice and Hearing. Before imposing a fine or exercising self-help abatement, the Board must give the Owner a minimum of one (1) written violation notice providing not less than five (5) days to abate the violation, and an opportunity to be heard.

6.2.1. Notice of Violation. The Board's written violation notice will contain the following: (i) the date the violation notice is prepared or mailed; (ii) a description of the violation; (iii) a reference to the rule or provision of the Documents that is being violated; (iv) a description of the action required to cure the violation; (v) the amount of the fine to be levied and/or the abatement action to be taken; (vi) the date the fine begins accruing or abatement action becomes possible; and (vi) a statement that not later than the 30th day after the date of the violation notice, the Owner may request a hearing before the Board to contest the fine or the abatement action.

6.2.2. Notice to Resident. In addition to giving the written violation notice to the Owner, the Board may also give a copy of the notice to the non-Owner resident, if the Board deems it appropriate.

6.2.3. Request for Hearing. To request a hearing before the Board, an Owner must submit a written request to the Board within thirty (30) days after the date of the violation notice. Within ten (10) days after receiving the Owner's request for a hearing, the Board will give the Owner notice of the date, time, and place of the hearing. The hearing will be scheduled for a date within forty-five (45) days from the date the Board receives the Owner's request, and should be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend.

6.2.4. Pending Hearing. Pending the hearing, the Board may continue to exercise the Association's other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of the fine or the abatement action described in the notice.

6.2.5. Hearing. The hearing will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner may attend the hearing in person, or may be represented by another person or written communication. No audio or video recording of the hearing may be made.

6.2.6. Minutes of Hearing. The minutes of the hearing must contain a statement of the results of the hearing and the amount of fine, if any, imposed, or abatement action, if any, authorized. A copy of the violation notice and request for hearing should be placed in the minutes of the hearing. If the Owner appears at the hearing, the notice requirement will be deemed satisfied.

6.3. Imposition of Fine. Within thirty (30) days after levying the fine or authorizing the abatement, the Board must give the Owner notice of the levied fine or abatement action. If the fine or action is announced at the hearing at which the Owner is actually present, the notice requirement will be satisfied. Otherwise, the notice must be in writing.

6.3.1. Amount. The Board may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Board may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation. If the Board allows fines to accumulate, the maximum amount for a fine may not exceed \$500.00 per violation occurrence. Each violation shall be treated as a separate occurrence regardless of whether the violation is of the same type or nature.

6.3.2. Type of Fine. If the violation is ongoing or continuous, the fine may be levied on a periodic basis (such as daily, weekly, or monthly). If the violation is not ongoing, but is instead sporadic or periodic, the fine may be levied on a per occurrence basis.

6.3.3. Other Fine-Related. The Association is not entitled to collect a fine from an Owner to whom it has not given notice and an opportunity to be heard. The Association may not charge interest on unpaid fines. The Association may not foreclose its assessment lien on a debt consisting solely of fines. The Board may adopt a collection policy that applies Owners' payments to unpaid fines before retiring other types of assessments.

6.4. Additional Enforcement Rights. Notwithstanding the notice and hearing requirement, the Board may take immediate and appropriate action, without giving the notices required in this Article, against violations of the Documents which, in the Board's opinion, are: (i) self-evident, such as vehicles parked illegally or in violation of posted signs; (ii) threatening to life or property; or (iii) repeat violations of the same provision by the same Owner to whom prior notices and demands have been given for the same violation. Further, the provisions of this Article do not apply to specific remedies provided in the Documents for certain violations, such as nonpayment of assessments.

#### **ARTICLE 7** **OBLIGATIONS OF OWNERS**

7.1. Notice of Sale. Any Owner intending to sell or convey his Property or any interest therein must give written notice to the Board of his intention, together with: (i) the address or legal description of the Property being conveyed; (ii) the name and address of the intended purchaser; (iii) the name, address, and phone number of the title company or attorney designated to close the transaction; (iv) names and phone numbers of real estate agents, if any, representing seller and purchaser; and (v) scheduled date of closing. An Owner will, furnish this information to the Board at least ten (10) business days before the scheduled date of closing or conveyance. The requirements of this Section may be satisfied by giving the Association a copy of an accepted resale contract in connection with the Owner's request to the Association for a resale certificate.

7.2. Proof of Ownership. On request by the Association from time to time, any person who purports to be an Owner or the agent of an Owner must furnish to the Board evidence of ownership of the Property. A copy of the recorded deed is the customary evidence. This requirement may be satisfied by receipt of a Board-approved form that is completed and acknowledged by a title company or attorney at time of conveyance of the Property or any interest therein. The Association may refuse to recognize a person as a Member unless the requested documentation is

provided.

7.3. Owners' Information. Within thirty (30) days after acquiring an ownership interest in a Property, the Owner must provide the Association with the Owner's mailing address, telephone number, and driver's license number, if any; the name and telephone number of any resident other than the Owner; and the name, address, and telephone number of any person managing the Property as agent of the Property Owner. An Owner must notify the Association within thirty (30) days after he has notice of a change in any information required by this Section, and must provide the information on request by the Association from time to time.

7.4. Mailing Address. The Owner or the several co-Owners of a Property must register and maintain one mailing address to be used by the Association for mailing of notices, demands, and all other communications. If an Owner fails to maintain a current mailing address with the Association, the address of the Owner's Property is deemed to be his mailing address.

7.5. Registration of Mortgagees. Within thirty (30) days after granting a lien against his Property, the Owner must provide the Association with the name and address of the holder of the lien. The Owner must notify the Association within thirty (30) days after he has notice of a change in the information required by this Section. Also, the Owner will provide the information on request by the Association from time to time.

7.6. Assessments. All Owners are obligated to pay assessments imposed by the Association to meet the common expenses as defined in the Declaration. A Member is deemed to be in good standing and entitled to vote at any meeting of the Association if he is current in the assessments made or levied against him and his Property.

7.7. Compliance with Documents. Each Owner will comply with the provisions and terms of the Documents, and any amendments thereto. Further, each Owner will always endeavor to observe and promote the cooperative purposes for which the Property was established.

## **ARTICLE 8 ASSOCIATION RECORDS**

8.1. Records. The Association will use its best efforts to keep the records required by Section 82.114(a) of the Act, including the following:

- i. Minutes or a similar record of the proceedings of meetings of the Association.
- ii. Minutes or a similar record of the proceedings of meetings of the Board.
- iii. Names and mailing addresses of the Members, the currency and

accuracy of the information being the responsibility of the Members.

- iv. **Financial records and books of account for the Association, kept in a manner consistent with generally accepted accounting principles.**
- v. **Copies of income tax returns prepared for the Internal Revenue Service.**
- vi. **Copies of the Documents and all amendments to any of these.**
- vii. **A record of all votes or written consents by which amendments to the Documents were approved, for at least four (4) years after the approval.**

**8.2. Inspection of Books and Records.** Books and records of the Association will be made available for inspection and copying pursuant to Section 82.114(b) of the Act and Sections 3.151, 3.153 and 22.351 of the Texas Business Organizations Code.

**8.2.1. Proper Purpose.** The Board may require a Member to submit a written demand for inspection, stating the purpose for which the Member will inspect the books and records. The Board has the following rights: (i) to determine whether the Member's purpose for inspection is proper; (ii) to deny the request if the Board determines that the Member's purpose is not proper; (iii) if granting the request, to identify which books and records are relevant to the Member's stated purpose for inspection.

**8.2.2. Copies.** A Member, at Member's expense, may obtain photocopies of books and records for which the Board grants the right of inspection. The Board has the right to retain possession of the original books and records, to make copies requested by the Member, and to charge the Member a reasonable fee for copying.

**8.2.3. Member's Agent.** A Member's inspection of the books and records may be assisted or performed by the Member's agent, accountant, or attorney.

**8.2.4. Records of Attorneys and Accountants.** The files and records of an attorney or accountant who performs services for the Association are not records of the Association, are not subject to inspection by Members, and are not subject to production in a legal proceeding.

**8.3. Resale Certificates.** Any officer may prepare or cause to be prepared, certify, and execute resale certificates in accordance with Section 82.157 of the Act. The Association may charge a reasonable fee for preparing resale certificates. The Association may refuse to furnish resale certificates until the fee is paid. Any unpaid fees may be assessed against the Property for which the certificate is furnished.

**ARTICLE 9**  
**NOTICES**

9.1. **Co-Owners.** If a Property is owned by more than one person, notice to one co-Owner is deemed notice to all co-Owners.

9.2. **Delivery of Notices.** Any written notice required or permitted by these Bylaws may be given personally, by mail, by fax, by email, or by any other method permitted by the Texas Business Organizations Code. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the Member at the address shown on the Association's records. If transmitted by fax or email, the notice is deemed delivered on successful transmission of the facsimile or email.

9.3. **Waiver of Notice.** Whenever a notice is required to be given to an Owner, Member, or director, a written waiver of the notice, signed by the person entitled to the notice, whether before or after the time stated in the notice, is equivalent to giving the notice. Attendance by a Member or director at any meeting of the Association or Board, respectively, constitutes a waiver of notice by the Member or director of the time, place, and purpose of the meeting. If all Members or directors are present at any meeting of the Association or Board, respectively, no notice is required and any business may be transacted at the meeting.

**ARTICLE 10**  
**DECLARANT PROVISIONS**

10.1. **Conflict.** The provisions of this Article control over any provision to the contrary elsewhere in these Bylaws.

10.2. **Board of Directors.** During the Declarant Control Period, Section 113 and Exhibit "A" of the Declaration governs the number, qualification, and appointment of directors. The initial directors will be appointed by Declarant and need not be Owners or residents. Directors appointed by Declarant may not be removed by the Owners and may be removed by Declarant only. Declarant has the right to fill vacancies in any directorship vacated by a Declarant appointee.

10.3. **Organizational Meeting.** Within one hundred and twenty (120) days after the end of the Declarant Control Period, or sooner at Declarant's option, Declarant or Managing Agent will call an organizational meeting of the Members. Notice of the organizational meeting will be given as if it were notice of an annual meeting.

**ARTICLE 11**  
**AMENDMENTS TO BYLAWS**

11.1. **Authority.** These Bylaws may not be amended by the Board without approval by the Members. These Bylaws may be amended by the simple majority of

the Board according to the terms of this Article.

11.2. Declarant Protection. During the Development Period, no amendment of these Bylaws may affect the Declarant's rights herein without the Declarant's written and acknowledged consent. Specifically, this Section and the article titled "Declarant Provisions" may not be amended without the prior written approval of the Declarant. The Declarant's written consent must be part of the amendment instrument.

## ARTICLE 12 GENERAL PROVISIONS

12.1. Compensation. A director, officer, Member, or resident may not receive any pecuniary profit from the operation of the Association, and no funds or assets of the Association may be paid as a salary or as compensation to, or be distributed to, or inure to the benefit of a director, officer, Member, or resident. Nevertheless,

i. Reasonable compensation may be paid to a director, officer, Member, or resident for services rendered to the Association in other capacities.

ii. A director, officer, Member, or resident may, from time to time, be reimbursed for his actual and reasonable expenses incurred on behalf of the Association in connection with the administration of the affairs of the Association, provided the expense has been approved by the Board.

iii. The Board may budget and use Association funds to purchase awards, certificates, a celebratory meal, or other customary tokens or demonstrations of appreciation for volunteer activities.

iv. This provision does not apply to distributions to Property Owners permitted or required by the Declaration or the Act.

12.2. Conflicting Provisions. If any provision of these Bylaws conflicts with any provision of the laws of the State of Texas, the conflicting Bylaws provision is null and void, but all other provisions of these Bylaws remain in full force and effect. In the case of any conflict between the certificate of formation of the Association and these Bylaws, the certificate of formation controls. In the case of any conflict between the Declaration and these Bylaws, the Declaration controls.

12.3. Severability. Whenever possible, each provision of these Bylaws will be interpreted in a manner as to be effective and valid. Invalidation of any provision of these Bylaws, by judgment or court order, does not affect any other provision which remains in full force and effect.



12.6. Waiver. No restriction, condition, obligation, or covenant contained in these Bylaws may be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

12.7. Indemnification. To the fullest extent permitted by applicable law, the Association will indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person; (i) acted in good faith and in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; or (ii) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

Adopted on the 3rd day of January, 2013

I, Mehrdad Moayedi, being the Declarant and Board of Director of Prestwyck Homeowners Association, Inc., do hereby affirm that these Bylaws were adopted for and in consideration of Prestwyck Homeowners Association as of the date set forth above.

  
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Mehrdad Moayedi,  
Declarant / President

PRESTWYCK HOMEOWNERS ASSOCIATION, INC.

PAYMENT PLAN POLICY AND  
APPLICATION OF PAYMENTS

Purpose: The purpose of this policy is to provide a uniform and consistent way to manage homeowner's requests for payment plans and to address their delinquent assessments and fees due to Prestwyck, (the "Association").

It is the intention of the Board of Directors to work with homeowners to satisfy their obligation to the Association. Therefore, in an effort to assist those homeowners in the payment of their obligations to the Association, the Board of Directors has established the following policy. If the Association employs a managing agent, the managing agent shall comply with the policies set forth in this payment plan policy. The managing agent shall not be required to obtain prior approval of the Board of Directors so long as the terms and restrictions set forth are being followed. Any deviation from this policy will require prior approval of the Board.

Payment Plans:

1. The Association will allow payment plans for repayment of delinquent amounts with a minimum of three (3) months duration.
2. Terms for repayment of delinquent amounts shall not exceed twelve (12) months without Board approval.
3. Assessments that become due and are added to the homeowner's account during the term of the payment plan must be paid when due in addition to repayment of delinquent amounts. The failure of an Owner to make current assessment payments when due shall constitute default of their payment plan.
4. A one-time fee of Thirty-Five and No/100 Dollars (\$35.00) shall be charged to the Owner's account which shall serve to reimburse the Association or its Managing Agent, if applicable, for its efforts to negotiate, establish, and initiate a payment plan on behalf of the Association. This charge shall be paid by Owner and shall be due along with the first installment payment. The Managing Agent may be eligible for additional administrative fees in connection with the monthly monitoring and processing of payments during an active payment plan. This fee shall not exceed \$10.00 per month, per payment plan and shall be payable by the Owner. In the event the Association terminates its contract with the Managing Agent early, the Association shall be responsible for any unpaid outstanding fees.
5. The plan must include the total debt owed to the Association, including late fees, interest, fines and/or other collection costs as well as any amount the Association has agreed to waive as part of the agreed upon payment plan terms. No account will receive an adjustment to charges owed until and unless the agreed upon payment plan is completed. At that time, the Association or its Managing Agent will make the adjustments, if any, agreed upon at the commencement of the payment plan. Should

the Owner default on the payment plan, no waiver shall be given and all late fees and collection fees that would have accumulated during that time shall be added to the Owner's account and shall be come due and payable immediately.

6. There shall be no waiver of any charges on the homeowner's account unless the owner submits a written request for consideration and approval. The Managing Agent shall have the authority to waive up to three (3) months late fees owed to the Association without Board approval. Fees owed to the Managing Agent may not be waived by the Board. Any waiver of collection or other fees owed to the Managing Agent shall be at the sole discretion of the Managing Agent.

7. To be eligible for a payment plan, the homeowner must not have defaulted on a prior payment plan within a two (2) year period preceding the request for a payment plan. If such a default exists, the Board or its Managing Agent may, but is not obligated, to allow a payment plan. Every such request shall be reviewed and determined on a case by case basis.

8. Interest, late and/or collection charges shall not accrue during the terms of an active payment plan so long as the Owner remains current on payments including current Assessments as they become due throughout the duration of the payment plan. Should the Owner default on his/her payment plan, the Association and its Managing Agent shall be entitled to add any interest, late and/or collection fees due up to and through the date the Owner defaulted and forward unless the payment plan reinstates which shall be at the sole discretion of the Board of Director's or its Managing Agent. As stated in Subsection 7 above, Owner's who default on a payment plan may not be entitled to another payment plan for a minimum of two (2) years.

9. The plan must contain a schedule setting forth the date that each payment will be due and the exact amount of each payment to be made.

10. Payment plans approved after the account has been turned over to the Association's attorney shall be administered by the Attorney. Attorney charges are Excluded from Sub Section 8 above and will be charged to the Owner's account.

11. Payment plans for Owner's in foreclosure may only be approved by the Board of Directors. The payment plan may be administered by the Association's Attorney and must include the amount due as well as any terms agreed upon between the Owner and the Board with regard to settlement amounts and terms. The Managing Agent, acting on behalf of the Board of Directors, shall communicate this information to the Association's attorney for the individual payment plan request and the initial payment must be received on or before the deadline established by the Association's attorney.

Settlements: The Board of Directors will consider written offers to settle an account and may but, are not obligated to include accounts at the foreclosure stage. Settlements must be paid in certified funds and may be subject to the deadlines established by the Association's attorney. Settlement offers may not include costs owed directly to the Managing Agent without the express written consent of the Managing Agent.

Default: The Board of Directors shall herein establish criteria for determining what constitutes "default" on payment plans.

"Default" may include one or all of the following:

1. Failure of homeowner to make a payment by the proposed date in accordance with the approved payment plan.
2. Failure of homeowner to make the full amount of a payment as stated in the approved payment plan.
3. Failure of homeowner to make a timely payment of any current or additional assessments or charges that come due such as Special Assessments or Individual Assessments, during the term of the payment plan.

Should the homeowner default on a payment plan:

1. The outstanding balance shall become due and payable immediately and may require payment in certified funds. The Association and its Managing Agent shall be entitled to add any interest, late and/or collection fees due up to and through the date the Owner defaulted and forward.
2. The Managing Agent shall proceed with appropriate collection measures in accordance with the Association's Collection Policy in order to secure payment of amounts due to the Association.

Any payment received by the Association from a homeowner whose account reflects an unpaid balance and the homeowner is in default under a payment plan entered into with the Association, the payment shall be applied to the outstanding balance in the following order so long as and unless a conflict between this policy and the Texas State Property Code exists, in which case the order of application of payment shall be as set forth in the Texas State Property Code:

- 1) Cost of Collection including attorneys' fees
- 2) Special Individual Assessments, including Violation Fines (If applicable)
- 3) Late Charges
- 4) Accrued but Unpaid Interest
- 5) Other costs of Collection
- 6) Special Assessments
- 7) Annual Assessments
- 8) Any other amounts owed to the Association

RESOLUTION ADOPTING A COLLECTION POLICY  
FOR  
PRESTWYCK HOMEOWNERS ASSOCIATION, INC.  
(the "Association")

WHEREAS, the Declaration of Covenants, Conditions and Restrictions (the "CCR's") for Prestwyck Homeowners Association, Inc., grants authority to collect delinquent assessments and provides that said fees for the collection of delinquent assessments shall be determined by the Board; and

WHEREAS, there is a need to adopt, amend, and/or supplement the collection policy to collect delinquent monies to operate the Association's affairs pursuant to requirements for the governing documents; and

WHEREAS, it is the intent of the Board of Directors to adopt, amend and/or supplement a collections policy;

NOW THEREFORE, BE IT RESOLVED, that the policy for collecting delinquent assessments shall be as follows:

1. Assessments are Annual and due January 1<sup>st</sup> of each year.
2. Assessment payments will be considered delinquent if payment is not received by or before January 31<sup>st</sup> of each year.
3. All assessments past due more than thirty (30) days, unpaid fines and other amounts owed to the Association by any Owner which are not paid when due may accrue interest thereon as may be determined by and at the sole discretion of the Board of Directors of the Association at any time and from time to time and shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum, but not in excess of the maximum rate allowed by applicable law (the "Default Interest Rate").
4. If any assessment or any part thereof remains unpaid after thirty (30) days from the initial due date, a late charge shall be assessed against the non-paying Owner's account for each month or any part thereof, any assessment remains unpaid. Should the assessment be payable in installments, the Association is authorized to accelerate the entire assessment and demand immediate payment thereof. The late charge shall be in the amount of Twenty-Five and No/100 Dollars (\$25.00) each month and shall be payable to the Association. The late fee shall be charged to the Owner's account.
5. The Association's Managing Agent shall be entitled to charge an Owner a monthly collection fee in the amount of Fifteen and No/100 Dollars (\$15.00) for each month or any part thereof, any assessment remains unpaid to compensate Managing Agent for its administrative costs and efforts to collect and process the late payment of Assessments. Additionally, as outlined in item number 7(c) below, the Managing Agent shall be entitled to additional compensation for every "30 Day Demand Letter"

processed and sent to an Owner with a delinquent account. In the event the Association terminates its contract with the Managing Agent early, the Association shall be responsible for the payment of all collection fees and charges owed to the Managing Agent up to the date of termination of contract.

6. In the event the Association is charged by their bank a fee which is due to a payment being returned for insufficient funds or for any other reason, the Association shall charge the full amount of the bank fee to the Owner's account for reimbursement to the Association.
7. Should a delinquent Owner's account remain unpaid after thirty (30) days, reasonable efforts to collect the assessments owed shall be initiated by the Association or its Managing Agent as outlined below or as may be set forth in the contract of the Association and Managing Agent, if applicable. The outline provided is not meant to be inclusive of the collection efforts or processes which can or may be taken. Other collection processes may include actions such as credit reporting or third party collections, the costs of which shall be charged to an Owner's account.

Reasonable Efforts may include the following:

- A. The Association or its Managing Agent shall send a minimum of one (1) notice. This notice shall be general in nature and may be a copy of account statement. The non-paying Owner shall have a minimum of ten (10) days to bring the account current. This notice shall be sent regular U.S. mail.
- B. If the non-paying Owner does not respond to the initial notice or pay the full amount due, the Association or its Managing Agent shall have the option to send a "Second Notice." The "Second Notice" shall include a Statement of Account and shall include sufficient wording alerting the Owner that failure to pay the amount due may result in the account being referred to the Association's attorney. The "Second Notice" shall give the non-paying Owner a minimum of ten (10) days to bring the account current. This notice shall be sent regular U.S. mail.
- C. If the non-paying Owner does not bring the account current after a first and/or second notice have been sent, the Association or its Managing Agent shall send a "30 Day Demand Letter." This notice shall be sent regular and certified mail by placing it for delivery with the U.S. Postal Service. The Managing Agent shall be entitled to a fee of Ten and No/100 Dollars (\$10.00) for each "30 Day Demand Letter" processed to compensate the Managing Agent for its administrative costs and efforts. This fee shall be charged to the non-paying Owner's account. The criteria below must be met before sending a "30 Day Demand Letter."
  - i. The non-paying Owner's account must be a minimum of thirty (30) days past due.

8. After a "30 Day Demand Letter" has been sent and the non-paying Owner has failed to bring the account current, the Association or its Managing Agent shall review the account to determine if it meets the criteria for referral to the Association's attorney. The Managing Agent shall have the authority to refer delinquent accounts to the Attorney for "Attorney Demand Letter" and "Notice of Lien" or "Lien" without requiring the prior approval of the Board on accounts with a delinquent balance of \$1,000.00 or more it being the intention of the Board of Directors on behalf of the Association that filing a lien on delinquent accounts for the purpose of securing payment of delinquent accounts shall be a routine part of the collection process set forth by the Association.


As part of the attorney's collection process, if the non-paying Owner fails to pay in full all Assessments and other charges due, the Association or its Managing Agent may cause a notice of the Association's Assessment Lien against the Owner to be publicly recorded. A copy of the notice of lien will be sent to the defaulting Owner, and may be sent to its Mortgagee. The Board of Directors may instruct an attorney, officer or agent of the Association to notify the defaulting Owner of the Association's intent to foreclose its Assessment Lien Nonjudicially, to post the property for sale at a public auction, and to conduct a public auction of the property in accordance with the Act, the Governing Documents and all other requirements of state law. The Board of Directors may file suit against the defaulting Owner for judicial foreclosure of the Association's Assessment Lien. This action may be combined with a claim against the Owner for recovery of a money judgment. NO FORECLOSURE PROCESS INCLUDING THE INITIAL NOTICE OF INTENT TO FORECLOSE SHALL BE SENT WITHOUT WRITTEN APPROVAL OF THE BOARD OF DIRECTORS WHICH MAY BE OBTAINED BY MAJORITY VOTE OF THE BOARD OR BY THE DESIGNATED BOARD MEMBER ASSIGNED TO THIS TASK, IF APPLICABLE. ALL SUCH APPROVALS SHALL BE IN WRITING AND SHALL BE MEMORIALIZED IN EXECUTIVE SESSION OF THE BOARD AND RECORDED IN THE MINUTES OF THE MEETING.

9. All late charges, collection fees, service charges and attorneys' fees assessed or incurred due to late payment of Assessments shall be charged to an Owner's account which shall be part of the delinquent Assessment and shall be payable and secured in the manner as provided in the Association's governing documents and / or under Texas Property Code 204.010.
10. The Association may file suit to recover any unpaid Assessment and, in addition to collecting such Assessment and interest thereon, may also recover all expenses reasonably expended in enforcing such obligation, including reasonable attorneys' fees and court costs.
11. The Association may but, is not obligated to waive any portion of charges and / or fees owed to the Association. All requests must be submitted in writing and presented to the Managing Agent for presentation to the Board. In order for the Board to make an informed decision, every request must include the reason for the waiver request and the specific amount of waiver requested. No request will be considered without this information provided.

These guidelines are supplementary and are in addition to any and all other covenants, conditions, restrictions, rules or regulations in effect for the Association. The Board of Directors, in their sole discretion, and by Board Resolution, amends the policies and procedures herein set forth. Any such amendment shall require a majority vote of the Board.

This is to certify the foregoing Collections Policy was adopted by the Board of Directors in accordance with Section 209.0062 of the Texas Property Code. If any provisions of this collection policy conflicts with any provision of the laws of the State of Texas, the conflicting provision is null and void, but all other provisions of this policy remain in full force and effect.

Affirmed to form and content this 24 day of February, 2016

  
Mehrdad Moayed, President



Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Culbte County, TEXAS  
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