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AMENDMENT

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Denton County, TX

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Diane Hornquist, Esq.
Hunt Realty Investments, Inc.
1900 N. Akard St.
Dallas, TX 75201

Cross References:
Denton County Reference to Original Declaration Instrument No: 131823
Denton County Reference to Brookside Supplement Instrument No: 133028

**AMENDED AND RESTATED
COMMUNITY CHARTER
FOR
BROOKSIDE AT FIELDS RESIDENTIAL PROPERTIES**

THIS AMENDED AND RESTATED COMMUNITY CHARTER FOR BROOKSIDE AT FIELDS RESIDENTIAL PROPERTIES ("**Charter**") is made by FHQ DEVELOPMENT PARTNERS LP, a Delaware limited partnership ("**Founder**").

W I T N E S S E T H

WHEREAS, Founder previously recorded that certain instrument entitled "Community Charter for Fields Residential Properties," on July 21, 2021 under Denton County Clerk's Instrument No. 131823 in the Official Public Records of Denton County, Texas (as may be amended and supplemented from time to time, the "**Original Charter**"); and

WHEREAS, Founder also previously recorded that certain instrument entitled "Supplement to Community Charter for Fields Residential Properties (Brookside Supplemental Design Guidelines)," on July 23, 2021, under Denton County Clerk's Instrument No. 133028 in the Official Public Records of Denton County, Texas (as may be amended and supplemented from time to time, the "**Brookside Supplement**") which imposed standards for design, development, landscaping, and aesthetics to provide guidance to property owners and builders on the real property specifically set forth in such Brookside Supplement; and

WHEREAS, pursuant to Section 21.2(a) of the Original Charter, Founder, until termination of the Founder Control Period, may unilaterally amend the Original Charter for any purpose and, until termination of the Development and Sale Period, may unilaterally amend the Original Charter if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; and

WHEREAS, pursuant to Section 10.6(a) of the "By-Laws of Fields Residential Association, Inc.," attached as Exhibit "E" to the Original Charter (as may be amended from time to time, the "**Original By-Laws**"), Founder, until termination of the Founder Control Period, may unilaterally amend the Original By-Laws for any purpose and, until termination of the Development and Sale Period, may unilaterally amend the Original By-Laws if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; and

WHEREAS, neither the Founder Control Period nor the Development and Sale Period have terminated; and

WHEREAS, the Texas Legislature recently made modifications to the Texas Property Code and other statutes, rules and regulations impacting the governance and operation of the property subject to the Original Charter; and

WHEREAS, pursuant to Section 21.2(a) of the Original Declaration and Section 10.6(a) of the Original By-Laws, Founder desires to amend and restate the Original Declaration and the Original By-Laws to reflect such modifications while preserving in effect the Brookside Supplement other than as set forth below; and

WHEREAS, pursuant to Section 5.3(a) of the Original Declaration, Founder has the sole and full authority to amend and supplement the Design Guidelines, attached as Exhibit "F" to the Original Charter (the "**Original Design Guidelines**"), for so long as it has review authority under Section 5.2(a) of the Original Declaration; and

WHEREAS, Founder continues to have review authority under Section 5.2(a) of the Original Declaration and desires to amend the Original Design Guidelines; and

WHEREAS, Founder desires to change the name of the community from "Fields Residential Properties" to "Brookside at Fields Residential Properties" along with other changes;

NOW THEREFORE, the Original Charter, the Original By-Laws and the Original Design Guidelines are hereby amended and restated in their entirety by the attached "Amended and Restated Community Charter for Brookside at Fields Residential Properties" and all exhibits thereto. All property subjected to the Original Charter shall be held, sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of the Charter, which shall run with the title to all such property identified on Exhibit "A" to the Charter, which may be amended and supplemented, and shall be binding upon all persons having any right, title, or any interest in all or any such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The Brookside Supplement referenced above shall remain in full force and effect and is not amended hereby, except that any reference to the Original Charter, Original By-Laws and Original Design Guidelines shall be deemed amended to reference the corresponding provision in the Amended and Restated Community Charter for Brookside at Fields Residential Properties attached hereto:

Upon recording please return to:

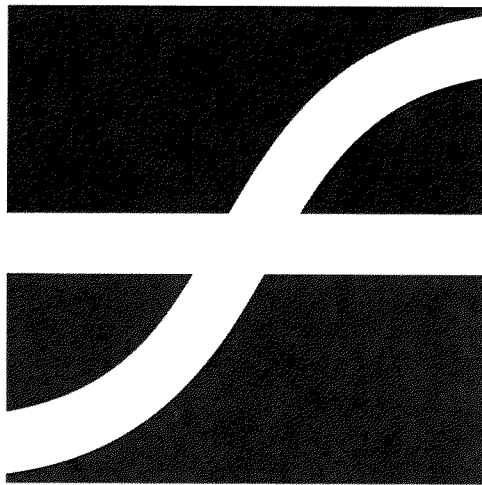
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1900 N. Akard St.
Dallas, TX 75201

AMENDED AND RESTATED

COMMUNITY CHARTER

FOR

BROOKSIDE AT FIELDS
RESIDENTIAL PROPERTIES



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AMENDED AND RESTATED
COMMUNITY CHARTER
FOR
BROOKSIDE AT FIELDS RESIDENTIAL
PROPERTIES

PREAMBLE

*Fields is a mixed use, master planned community located in the City of Frisco, Collin and Denton Counties, Texas, which consists or may consist of a variety of residential, commercial, and industrial uses ("**Fields**"). FHQ DEVELOPMENT PARTNERS LP, a Delaware limited partnership, as the founder of Brookside at Fields (together with its successors and assigns, the "**Founder**"), has established and recorded this Amended and Restated Community Charter for Brookside at Fields Residential Properties (the "**Charter**"), to provide a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the areas within Brookside at Fields ("**Brookside at Fields**"), a residential components of Fields.*

*An integral part of the development plan is the formation of Fields Residential Association, Inc., a Texas nonprofit corporation (the "**Association**"), to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Charter and the other Governing Documents referenced in this Charter. This document does not, and is not intended to, create a condominium under Texas law.*

DECLARATION

The property described in **Exhibit "A"** and any additional property made subject to this Charter in the future by amendment or supplement, shall constitute the "**Community**," as such term is used in this Charter. This Charter shall run with the title to such property, shall govern the development and use of such property, and shall be binding upon the Founder and the current and future owners of any portion of the property made subject to this Charter, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property. This Charter shall also be binding upon the Association, its successors and assigns.

PART ONE: INTRODUCTION TO THE COMMUNITY

ARTICLE 1 GOVERNING DOCUMENTS

A community is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agree to uphold. Those principles are set forth in the community's governing documents, which serve as a tie that binds the community together, give it structure, and provide guidance to all who participate in its growth and evolution.

1.1. Scope and Applicability.

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Charter as the "**Governing Documents**," include this Charter and the other documents described in Table 1.1, as they may be amended. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents. All owners and occupants shall be held accountable and liable for the actions of their tenants, guests, and invitees.

1.2. Conflicts and Ambiguities.

If there are conflicts between any of the Governing Documents and Texas law, Texas law shall control. If there are conflicts between or among any of the Governing Documents, then the Covenant, the Charter, the Certificate of Formation, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants (or the rules

or policies adopted pursuant to any such additional covenants) recorded on any property within the Community after the date such property is made subject to this Charter, the Governing Documents shall control.

The Governing Documents use diagrams, tables, and keynotes (text set apart in boxes with "key" icons) to emphasize or explain concepts and highlight certain key points. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control. The explanatory text set apart in the boxes are mere summaries of legal principles or explanations and have no legal force or effect.

Space has been set aside throughout this Charter to allow the reader to make notes. Those spaces and the heading that denotes the spaces are not part of this Charter and have no legal or binding effect.

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

1.3. Definitions.

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found following the Table of Exhibits at the beginning of this document. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

GOVERNING DOCUMENTS	
Charter: (recorded)	this Amended and Restated Community Charter for Brookside at Fields Residential Properties, which creates obligations that are binding upon the Association and all current and future owners of property in the Community
Supplement: (recorded)	a recorded Supplement to this Charter, which may submit additional property to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate special areas as described in Article 3, or any of the foregoing
Certificate of Formation: (filed with the Texas Secretary of State; copy attached as Exhibit "D")	the Certificate of Formation of Fields Residential Association, Inc., as it may be amended, which establishes the Association as a nonprofit corporation under Texas law
By-Laws: (Board adopts; copy attached as Exhibit "E")	the By-Laws of Fields Residential Association, Inc. adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc.
Design Guidelines: (Founder adopts; initial set attached as Exhibit "F")	the design guidelines and any supplemental architectural and aesthetics standards adopted pursuant to Article 5, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units
Rules: (initial set attached as Exhibit "C")	the rules of the Association adopted pursuant to Article 7, which regulate use of property, activities, and conduct within the Community
Board Resolutions: (Board adopts)	the resolutions adopted by the Association's board of directors establishing rules, policies, and procedures for internal governance and for operation and use of property which the Association owns or controls

Table 1.1 - Governing Documents

1.4. Interpretation of Certain References.

Community-Wide Standard. Where the Governing Documents require compliance with the "**Community-Wide Standard**," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community; or (b) the minimum standards described in this Charter, the Design Guidelines, the Rules, and Board resolutions, or (c) the minimum standards described in the Covenant or otherwise established by the Joint Committee in accordance with the Covenant. The Community-Wide Standard may contain objective elements, such as

specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Article 5). The Community-Wide Standard may or may not be set out in writing. The Founder initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as the Community matures.

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the dis-

cretion of the Person whose consent or approval is required.

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

Maintenance. All references in this Charter to "**maintenance**" shall refer to maintenance, repair, and replacement.

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

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

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

NOTES AND THOUGHTS

* * *

ARTICLE 2 COMMUNITY ADMINISTRATION

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

2.1. The Founder.



The Founder retains various rights to facilitate the development and sale of the Community, including the right to appoint a majority of the members of the Association's board of directors during the "Founder Control Period."

The Founder has established the vision for Fields and for the Community and, through the Governing Documents, has set forth the founding principles that will continue to guide the Community during present and future development and sale and thereafter. The Founder's proposed plan of development encompasses all of the property described in Exhibit "A" and all or a portion of the property described in **Exhibit "B"** (the "**Master Plan**"). However, the Founder is not obligated to submit property shown on the Master Plan to this Charter. In addition, the Founder may submit property to this Charter that is not shown on the Master Plan.

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Founder, any "Founder Affiliate," or any "Builder" (defined in Section 2.4) owns real property in the Community or has an unexpired option to expand the Community pursuant to Article 17.

A "**Founder Affiliate**" is any Person that controls, is controlled by, or is under common control with the Founder, and any Person that is an owner, a member, a partner, or a shareholder of the Founder.

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

(a) one hundred and twenty (120) days after 75% of the maximum number of Units which Founder proposes to develop within the property described in the Master Plan that may be made subject to the Charter ("**Maximum Number of Units**") have certificates of occupancy issued thereon and have been conveyed to persons other than Builders holding title for purposes of construction and resale. As of the date the Charter is initially recorded, the Maximum Number of Units is 2,500. Until expiration or termination of the Development and Sale Period, Founder may unilaterally increase or decrease the Maximum Number of Unit in a recorded instrument;

(b) December 31, 2060; or

(c) when, in its discretion, the Founder so determines and declares in a recorded instrument.

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

The Founder may assign its status and rights as the Founder under the Governing Documents to any person who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale. Such

assignment shall be made only in a recorded instrument signed by both parties.

2.2. The Association and its Board.

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

The Association may exercise all rights and powers which the Governing Documents, the Covenant, and Texas law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

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

2.3. The Owners.

Each Person that holds record title to a "Unit" (as defined in Section 3.1) is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a deed of trust, mortgage, or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so

states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

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

2.4. Builders.

Much of the responsibility and credit for helping to create the Community rests with the "Builders" - those Persons who purchase one or more unimproved Units or parcels of land within the Community for further subdivision or development and resale in the ordinary course of their business. The Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, the Founder may extend any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate.

2.5. Neighborhood Associations.

Portions of the Community may be developed under a condominium form of ownership or may have special requirements that lead the responsible Builder or the Founder to establish a separate condominium or homeowners association to administer additional covenants applicable to that particular area (a "Neighborhood Association"). However, nothing in this Charter requires the creation of a Neighborhood Association. If created, the Owners of Units within the jurisdiction of a Neighborhood Association shall be members of both the Neighborhood Association and the Association.

A Neighborhood Association shall be responsible for administering the additional covenants applicable to the property within its jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property it owns or which is designated pursuant to such additional covenants as being for the common benefit of its members. However, the Neighborhood Association may contract with others, including the Association, to perform various services on its behalf.

2.6. Mortgagees.

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

2.7. Commercial Association.

The Founder may establish a separate property owners association to administer covenants and restrictions applicable to properties intended for commercial, institutional, multi-family rental, and/or industrial uses within Fields (the "**Commercial Association**"). If created, the Founder intends for the Association and the Commercial Association to cooperate in the administration of the property within their respective jurisdictions and in the enforcement of their respective governing documents in order to establish and maintain consistent standards of operation, maintenance, architecture and use throughout Fields. This may include, without limitation, entering into agreements for common management or maintenance.

2.8. Joint Committee.

The Founder has or will establish an entity referred to as the Fields Joint Committee (the "**Joint Committee**") to maintain and operate such things as recreational facilities, conservation areas, open space and other properties within Fields

for the common benefits of multiple residential and commercial owner associations and their members, as well as other properties. The Joint Committee will operate pursuant to the "Fields Covenant" recorded or to be recorded, as it may be amended and supplemented ("**Covenant**") and pursuant to its by-laws, as they may be amended ("**Joint Committee By-Laws**"). The Association shall represent the Owners within the Community on the Joint Committee as set forth in the Covenant; however, the Owners shall not be members of the Joint Committee.

The Joint Committee is authorized to allocate its reasonable overhead and expenses between the Association, the Commercial Association and any other owners associations and properties subject to the Covenant in such manner as the Joint Committee's board of directors may determine appropriate in accordance with the Covenant and the Joint Committee By-Laws. The Association shall include an estimate of charges to be billed by the Joint Committee to the Association as a line item in the Association's annual operating budget to be allocated among all Units as a Common Expense (as defined in Section 12.1). The Association may enter into a management agreement with the Joint Committee, or a common management agreement with the Joint Committee and the Commercial Association, by which it delegates performance of any of its administrative or management functions to the Joint Committee or its designees.

2.9. Development Agreements.

(a) *Development Agreement.* Certain property within the Community is subject to that Development Agreement between FHQ Holdings LP, a Delaware limited partnership ("**FHQ Holdings**") and the City of Frisco, Texas (the "**Development Agreement**") recorded on April 28, 2020, as Instrument No. 54993 in the Official Public Records of Denton County, Texas, as the same may be amended from time to time, which imposes certain standards for building products and materials and aesthetic methods in the construction, renovation and alterations of Improvements. The initial standards and require-

ments set forth in the Development Agreement are set forth on Exhibit "G" to this Charter (the "**Building Material Standards**"). No construction, renovation, maintenance and/or alteration may be undertaken that does not comply with the Building Material Standards.

The City of Frisco, Texas, may amend, revise, supplement or otherwise modify the Building Materials Standards in its sole discretion. Furthermore, the City of Frisco, Texas, has the right, but not the obligation, to enforce the Building Materials Standards.

Compliance with the Building Material Standards is in addition to and not in lieu of the provisions set forth in the Design Guidelines. In the event of a conflict between the Building Material Standards and the Design Guidelines, the Building Material Standards shall control.

(b) *Second Development Agreement.* The Community is also subject to that Second Development Agreement between FHQ Holdings and the City of Frisco, Texas (the "**Second Development Agreement**") which sets forth the respective rights and obligations of the parties thereto with respect to the construction of certain public infrastructure improvements, the participation in the costs thereof, the imposition and collection of "Infrastructure Assessments," as such term is defined in the Second Development Agreement, the conveyance of certain rights-of-way and easements and certain other matters as more particularly set forth therein.. A Memorandum of Second Development Agreement between FHQ Holdings and the City of Frisco, Texas was recorded on February 11, 2021, as Instrument No. 25468 in the Official Public Records of Denton County, Texas, as the same may be amended from time to time.

NOTES AND THOUGHTS

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ARTICLE 3 COMMUNITY STRUCTURE AND ORGANIZATION

The Community consists of homes and home sites intended for the exclusive use of the Owners and occupants, as well as property that is intended for common use. Units may be assigned to "Neighborhoods" to facilitate voting on Association matters. Units may be assigned to Service Areas to enable the Association to provide special services and benefits to particular areas of the Community.

3.1. Designations of Properties Comprising the Community.

Units. The Governing Documents refer to the homes and home sites in the Community as "Units." A "Unit" is a portion of the Community depicted as a separately identified lot or parcel of land or airspace in a recorded subdivision plat, survey, or condominium instrument, which portion may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residence for a single family or household. However, any property conveyed to the Association as "Common Area" (as described below) shall not be considered a "Unit," even though such property may be identified as a separate lot on a recorded subdivision plat and originally intended for construction of a dwelling. Likewise, the common property of any Neighborhood Association and property dedicated to the public shall not be considered a "Unit." The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on such land. In the case of a building comprising a condominium or other structure containing multiple dwellings, each dwelling shall be considered a separate Unit. A parcel of land intended for development as one or more Units shall be treated as a single Unit until a subdivision plat, survey, or condominium instrument is recorded dividing it into more than one Unit. The subdivision and combination of Units is subject to the provisions of Section 7.1(d).

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

Limited Common Area. Certain portions of the Common Area may be designated as "**Limited Common Area**" and assigned for the exclusive use or primary benefit of two or more Units in specified portions of the Community. Limited Common Areas might include such things as entry features, private streets, alleys, and recreational facilities, among other things, that benefit only a portion of the Community.

The Founder may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Charter. At any time during the Development and Sale Period, the Founder may assign use of the same Limited Common Area to additional Units.

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

tial Area of Common Responsibility is described in Article 9.

Other Properties. In addition to the above, the Community may include property dedicated to the public and property owned or controlled by a governmental or quasi-governmental entity, or by another owners association for the common use and enjoyment of its members (collectively, "**Other Properties**"). Unless specifically agreed to by the owner of a Private Amenity, the term Other Properties shall not include any Private Amenities. Any Other Properties shall be subject to the provisions of this Charter, including, without limitation, the provisions of Part Two of this Charter relating to Community Standards, the easements set forth in Article 13, and the rights of the Founder described in Article 18, except to the extent that applicability of such provisions is specifically limited to Units; however, Other Properties shall not be subject to assessment by the Association for Common Expenses and the owners of Other Properties shall have no membership or voting rights in the Association by virtue of ownership of such Other Properties, unless such property would fall within the definition of a "Unit" under this Section 3.1 if owned by any other Person.

3.2. Neighborhoods.

Units will be grouped into "**Neighborhoods**" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership. A Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another. Each Neighborhood will elect one "Voting Delegate" to cast the votes allocated to Units in that Neighborhood on matters requiring a vote of the Owners, as described in Article 4.

The Founder will assign Units to a specific Neighborhood (by name or other identifying designation) in a Supplement. During the Development and Sale Period, the Founder may unilaterally record a Supplement, or an amendment

to this Charter or any previously recorded Supplement, to designate or change Neighborhood boundaries. Thereafter, the Board may amend this Charter or any Supplement to re-designate Neighborhood boundaries; however, the Board may not combine two or more existing Neighborhoods without the consent of the Owners of a majority of the Units in the affected Neighborhoods.

3.3. Service Areas.

Units may also be part of one or more "**Service Areas**" in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units within the Community. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous.

The Founder may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally amend this Charter or any Supplement to designate or change Service Area boundaries.

In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation pursuant to Section 10.2.

The Owners of Units within each Service Area may elect a "**Service Area Committee**" in accordance with the By-Laws to represent and act on behalf of the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

ARTICLE 4

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

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

4.1. Membership.

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

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

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

In any Supplement submitting additional property to the terms of this Charter, the Founder may establish additional classes of membership

comprised of the owners of Units within any portion of the additional property described in such Supplement. The Founder shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

4.2. Voting.

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

Due to the number of Units that may be developed in the Community, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood elect a "**Voting Delegate**" and an alternate Voting Delegate, in the manner provided in the By-Laws, to cast the votes of all Units in the Neighborhood, other than Units owned by the Founder, on matters requiring a vote of the membership, except where the Governing Documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Voting Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Voting Delegate" and may personally cast the vote allocated to such Owner's Unit on any issue requiring a vote of the Voting Delegates under the Governing Documents. The Founder shall be considered the Voting Delegate for, and may personally cast the vote(s) allocated to, Units which it owns.

It is the duty of a Voting Delegate, or in his or her absence, the alternate Voting Delegate, to attend Association meetings and cast the votes allocated to the Units that he or she represents on any matters as to which such Voting Delegate is entitled to vote under the Governing Documents. A Voting Delegate may, but is not required to, conduct a poll of the Owners of Units

in the Neighborhood which he or she represents prior to voting. If such a poll is conducted, the Voting Delegate shall cast the votes in accordance with the result of the poll. Any votes not accounted for in the poll may be cast in the Voting Delegate's discretion. The Voting Delegate shall not be entitled to fractionalize any single vote.

Voting Delegates are subordinate to the Board, and their responsibility and authority as Voting Delegates does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

In any situation in which an Owner is entitled personally to exercise the vote for his or her Unit, if there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves. Any co-Owner may cast the vote for the Unit and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement, the Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently.

NOTES AND THOUGHTS

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PART TWO: COMMUNITY STANDARDS

ARTICLE 5

DESIGN, LANDSCAPING, AND AESTHETIC STANDARDS

The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This Article explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.

5.1. General.

All site work, landscaping, structures, improvements, modifications, and items placed on a Unit or on Other Properties in a manner or location visible from outside of any existing structures on the Unit or Other Properties ("**Improvements**") are subject to standards for design, development, landscaping, and aesthetics adopted pursuant to this Article ("**Design Guidelines**") and the approval procedures set forth in this Article, except to the extent that Texas Property Code Chapter 202, as it may be amended or any successor Texas statute, this Article, or the Design Guidelines may otherwise specify.

To preserve the natural environment and to protect the natural landscape and resources within Brookside at Fields, all Improvements to a Unit shall be confined to the allowable building area of the Unit ("**Building Envelope**"). The Building Envelope for each Unit shall be determined by the Founder in its sole and absolute discretion.

No Improvements shall be made to a Unit, and the Reviewer, as defined below, shall not review an application under Section 5.3(b) until Founder determines the Building Envelope. Only the Founder, in its sole and absolute discretion, may modify the Building Envelope. Ex-

cept with the prior written approval of the Reviewer, all areas of a Unit outside the Building Envelope shall remain undisturbed and shall remain in their natural state unless selective clearing or other changes to the natural landscape are mandated by any governmental agency.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval.


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

Approval under this Article is not a substitute for any approvals or reviews required by the City of Frisco, by Denton County, Texas or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters. However, Owners shall obtain all approvals required pursuant to this Article and the Design Guidelines prior to seeking any approvals or permits required by the City of Frisco, by Denton County, Texas or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This Article shall not apply to the Founder's design and construction activities or to the Asso-

ciation's activities during the Founder Control Period.

5.2. Design Review Authority.



Until the Founder gives up such right, it will review applications for proposed Improvements and determine whether they should be approved. Once the Founder gives up such review right, the Board of Directors will appoint an Design Review Committee to review applications for proposed improvements. The Founder or the Design Review Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

(a) **Founder.** The Founder shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings that are substantially complete and occupied or ready for occupancy. The Founder may designate one or more persons to act on its behalf in reviewing any application. The Founder may also establish a committee comprised of such persons as the Founder deems appropriate (which may but need not include Builders, architects, engineers, or other professionals), to review applications and make recommendations to the Founder of approval or disapproval during the period of time that the Founder holds reviewing authority under this Article. In reviewing and acting upon any request for approval, the Founder and its designee act solely in the Founder's interest and owe no duty to any other Person.

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

control, and (ii) the Founder's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Founder has any rights under this Article, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

(b) **Design Review Committee.** Upon the Founder's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Founder's rights under this Article, the Board shall appoint an Design Review Committee ("**Design Review Committee**" or "**DRC**") to assume jurisdiction over matters within the scope of the delegated authority or this Article, respectively. The DRC shall consist of at least three, but not more than five, persons who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may, but shall not be compelled to, compensate DRC members in such manner and amount, if any, as the Board may determine appropriate. After termination of the Founder's authority under Section 5.2(a), the members of the DRC may not be then current members of the Board, their spouse or a person residing in the same household of a Board member.

Until expiration of the Founder's rights under this Article, the DRC shall notify the Founder in writing within seven business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this Article. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 10 business days after receipt of such notice to veto any such action, in its discretion, by written notice to the DRC.

Unless and until such time as the Founder delegates all or a portion of its reserved rights to the DRC or the Founder's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

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

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

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

5.3. Guidelines and Procedures.



The purpose of the Design Guidelines is to maintain a consistent character and quality of appearance for the Improvements within the community and to ensure that Improvements are constructed in an orderly manner. The Design Guidelines may describe what types of building materials and design elements are preferred and others that are discouraged. The Design Guidelines also provide a specific procedure for submitting applications for proposed Improvements and describe how to carry out the construction of the Improvements once approval has been received.

(a) **Design Guidelines.** The initial Design Guidelines are attached as Exhibit "F," but are subject to being amended and supplemented as provided in this section. The Design Guidelines may contain general provisions applicable to the entire Community as well as specific provisions that vary among uses or locations within the Community. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Founder shall have sole and full authority to amend and supplement the Design Guidelines for so long as it has review authority under Section 5.2(a). The Founder's right to amend and supplement the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Founder also delegates the power to amend and supplement to the DRC. Upon termination or delegation of the Founder's right to amend and supplement, the DRC may amend and supplement the Design Guidelines with the Board's consent. No amendment or supplement shall be inconsistent with the provisions of Texas Property Code Chapter 202, as it may be amended or any successor Texas statute.

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

The Reviewer shall make the Design Guidelines, as they may be amended and supplemented, available to Owners and their contractors upon request.

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

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

Subject to the provisions of Texas Property Code Chapter 202, as it may be amended or any successor Texas statute, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Article 19 or judicial

review so long as they are made in good faith and in accordance with required procedures and Texas Property Code Chapter 202, as it may be amended or any successor Texas statute.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

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

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

As part of any approval, the Reviewer may require that construction commence within a

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

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

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

(c) ***Governmental Requirements.*** The Community may be subject to the terms and provisions of a development agreement with the City of Frisco, Texas, Denton County, Texas or other governmental entities instituting certain zoning requirements as well as development requirements. Such requirements, such as, but not limited to, minimum setbacks; flag lot requirements; exterior finish; garage door treatment; street tree requirements, residential architectural standards, signage, lighting, parks, and landscaping standards shall supersede the requirements set forth in the Design Guidelines.

(d) ***Appeals Process.*** After termination of the Founder's review authority under Section 5.2(a), any decision by the DRC denying an application may be appealed to the Board. A written notice of the denial must be provided to the

Owner by certified mail, hand delivery, or electronic delivery and shall:

(i) describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and

(ii) inform the Owner that the Owner may request a hearing before the Board on or before the 30th day after the date the notice was mailed to the Owner.


The Board shall hold a hearing under this section not later than the 30th day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. Only one hearing is required on any application. During a hearing, the Board or the Association's designated representative and the Owner or the Owner's designated representative shall each have the opportunity to discuss, verify facts, and attempt to resolve the denial of the Owner's application, and the changes, if any, requested by the DRC in the notice of denial provided to the Owner. Either the Board or the Owner may request a postponement of the hearing for up to 10 days and such request shall be granted. Additional or longer postponements may be granted by agreement of the parties. The Association or the Owner may make an audio recording of the meeting. On appeal, the Board may affirm, modify, or reverse, in whole or in part, any decision of the DRC.

5.4. No Waiver of Future Approvals.

The people reviewing applications under this Article will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as

to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances.



In some circumstances, an Owner may find it difficult or impossible to comply with the requirements of the Design Guidelines. In that case, the Owner can file a request with the Reviewer to be excused from complying with the Design Guidelines. The Reviewer has the discretion to grant or deny the request.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. However, no variance shall: (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances. Any variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

5.6. Limitation of Liability.

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

The Founder, the Association, its officers, the Board, any committee, and members of any of the foregoing shall not be liable for: (a) soil conditions, drainage, or other general site work;

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

5.7. Certificate of Compliance.

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

NOTES AND THOUGHTS

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ARTICLE 6

MAINTENANCE, REPAIR, AND REPLACEMENT

One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the community. This Article describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.

6.1. Maintenance of Units.

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to this Charter, any Supplement, any additional covenants administered by a Neighborhood Association, or by law.

Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of the Unit boundary. However, Owners may not remove trees, shrubs, similar vegetation, or other improvements from this area without prior approval pursuant to Article 5.

The Owner of any Unit on which there is located utility facilities or equipment for electricity, cable, telephone, or similar utilities serving the Community, shall install and maintain landscaping around such utility facilities or equipment in accordance with such landscape guide-lines as may be established pursuant to Article 5. Such landscaping shall be maintained at a standard which shall permit access to such utility facilities

or equipment for maintenance, repair, and replacement.

6.2. Maintenance of Other Properties.

Any Neighborhood Association, or any other entity which owns or has responsibility for Other Properties (as described in Section 3.1) shall maintain such Other Properties in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

Such maintenance shall include responsibility for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its property and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of its boundary. No Person shall remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article 5.

The Association may assume maintenance responsibility for any property in the Community, either upon designation of such property as part of a Service Area pursuant to Section 3.3 or upon the Board's determination, pursuant to Article 8, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The Association may assess the cost of such maintenance against the benefited property as a Specific Assessment pursuant to Section 12.4, or if authorized by a recorded Supplement designating a Service Area, against all Units in the benefited Service Area as a Service Area Assessment, as provided in Section 12.2(c). The Association need not treat all similarly situated Neighborhood Associations or properties the same.

6.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either a Neighborhood Association (if any) or the Association carries such insurance (which they may but are not obligated to do). Likewise, any entity which owns Other Properties shall carry property insurance for the full replacement cost of all insurable improvements on such Other Properties, less a reasonable deductible. The Association may, but shall have no obligation to, monitor compliance with this requirement. Each Owner or entity required to maintain insurance hereunder shall furnish a certificate of insurance to the Association within 10 days of the Association's request. If the Association assumes responsibility for insuring any property hereunder, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit or other property and the owner thereof.

Within 90 days after any damage to or destruction of a structure on a Unit or Other Properties, the Owner or Person responsible for repair and replacement thereof shall promptly commence repair or reconstruction in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Article 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Unit shall be cleared of debris and thereafter maintained in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner or Person responsible for repair and replacement of Other Properties requiring repair or replacement here-

under shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Neighborhood Association or Service Area may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This section shall apply to a Neighborhood Association with respect to common property of the Neighborhood Association and to the Joint Committee and any other Person which owns or is responsible for maintaining Other Properties, in the same manner as if such Neighborhood Association or other Person were an Owner and its property were a Unit.

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

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

Notwithstanding the above or anything to the contrary in this Charter, if maintenance or repairs to a party structure are necessitated by the conduct of the Owners, occupants or guests of

only one of the Units that share such party structure, then the Owner of such Unit shall be responsible for the necessary maintenance or repairs.

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

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

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

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

NOTES AND THOUGHTS

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ARTICLE 7 USE AND CONDUCT

In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this Article sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the rules regulating use, conduct, and activities within the Community may be expanded and modified to address particular needs and desires of the Community over time.

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

(a) *Residential and Related Uses.* Units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing, and sale activities of the Founder and Builders it designates. A business activity shall be considered "related" to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

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

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

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

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

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

(b) *Leasing.* For purposes of this Charter, the terms "**Lease**" and "**Leasing**" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner for which the Owner receives any consideration or benefit. Leasing of Units is prohibited except in strict compliance with the following:

(i) Any Unit that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, any detached "in-law suite" or "guest house" approved pursuant to Article 5 may be leased separate from the main dwelling;

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

(iii) No signs shall be posted in Brookside at Fields or on the right-of-way adjacent to Brookside at Fields advertising the availability of the Unit for rent, except that the Owner of a Unit being offered for lease may post one standard real estate sign on such Unit, not to exceed four feet in height, the total message area of which does not exceed 12 square feet (all sides combined), advertising the Unit for rent during any period that the Unit is vacant and within the 90 day period immediately prior to expiration of the term of any lease which is not being renewed;

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

(v) **All leases shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the**

Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide (A) the commencement date and term of the lease; (B) contact information, including the name, mailing address, phone number, and e-mail address of each person who will reside in the Unit under the lease; and (C) any additional information the Board may reasonably require consistent with Texas Property Code Section 209.016. The Owner must give the tenant copies of the Governing Documents.

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

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

No Owner shall transfer title to a Unit unless and until he or she has requested and obtained a resale certificate signed by a representative of the Association as described in Texas Property Code Section 207.003(b), as it may be amended or any successor Texas statute, (a "**Resale Certificate**")

indicating, in addition to all other matters described in Texas Property Code Section 207.003(b), as it may be amended or any successor Texas statute, that, as of the date of such certificate: (i) all assessments (or installments thereof) and other charges against the Unit due and payable through the date of the Resale Certificate have been paid; and (ii) there are no violations of the Governing Documents that have not either been cured or waived in writing by the Association.

The Association shall deliver a Resale Certificate, along with a current copy of the Governing Documents, within 10 days after the Association's receipt of a written request from an Owner or Owner's agent, or a title insurance company acting on behalf of the Owner. If the Resale Certificate indicates that there are known conditions on the Unit which violate the Governing Documents, or that there are amounts due and unpaid to the Association on account of the Unit, the Owner shall cure any such violations and pay any such amounts prior to transfer of title and, upon doing so, may request an update to the Resale Certificate to reflect such action.

The Association may charge a reasonable fee to prepare, assemble, copy, and deliver a Resale Certificate and accompanying information and any update to a Resale Certificate. In addition, upon acceptance of title to a Unit, the new Owner of the Unit shall pay to the Association a reasonable administrative fee, in such amount as the Board may determine necessary to cover the costs the Association incurs to updating the Association's records. In neither event shall the amount charged exceed the limitations set forth in Texas Property Code Section 207.003(c).

(d) *Subdivision and Combination of Units.* No Person other than the Founder and Builders whom the Founder may authorize to do so shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the af-

ected Unit(s). In addition, the Founder's approval shall be required during the Development and Sale Period. The Board's approval may set forth a determination of how combined Units shall be treated for purposes of voting or assessment. In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling.

(e) *Short Term/Transient Use; Timesharing.* No Person shall list, advertise, or operate any Unit or portion of a Unit as a hotel, inn, "bed and break-fast," vacation rental, or other "Short-Term Lodging" (defined as rental or occupancy for a period shorter than the Minimum Lease Term described in Section 7.1(b)(iv)). No Unit shall be used for lodging of persons other than the Owner or a tenant who resides in the Unit pursuant to a lease complying with Section 7.1(b), members of their respective households, and their occasional, non-paying overnight guests visiting while a permanent resident of the Unit is present in the Unit, except that if a Unit is owned by a legal entity, such entity may permit the Unit to be occupied on a short-term basis by any director, officer, partner, or employee of such entity which the Owner identifies in advance by written notice to the Association, so long as no more than one such person is permitted to occupy the Unit in any 30-day period. No Unit shall be used for operation of any type of timesharing, fraction-sharing, residence club, vacation club, destination club, or similar program whereby the right to exclusive use of the Unit rotates among owners, participants, or members of the program on a fixed or floating time schedule, on a reservation basis, or on such other basis as may be set forth in the terms of the program, unless such program is established by the Founder or with the Founder's prior written approval.

7.2. Rulemaking Authority and Procedures.



Since it is impossible to foresee all potential situations and problems that may arise within the community, the Association has the authority to adopt and modify rules as needed to address these changing circumstances.

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

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

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

(c) **Membership Authority.** Subject to the notice requirements in subsection (d), the Voting Delegates representing at least 67% of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, during the Development and Sale Period, any such action shall also be subject to the Founder's approval.

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

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

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

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

7.3. Protection of Owners and Others.

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

(a) *Similar Treatment.* Similarly situated Units shall be treated similarly; however, the Rules may vary by Neighborhood Association, Service Area, housing type, location, or other distinct characteristics of areas within Brookside at Fields.

(b) *Flags and Other Displays.* No Rule shall abridge the right of the Owner or occupant of a Unit to display the official flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States armed forces, on the Unit owned or occupied by such Owner, except that Rules may regulate the use or manner of display of such flags to the extent that Texas Property Code Chapter 202, as it may be amended or any successor Texas statute, expressly authorizes such regulation.

No Rule shall abridge an Owner's right to display other political, religious, or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs, except that the Association may adopt time, place, and manner restrictions with respect to such signs, symbols, and displays as are visible from outside structures on the Unit, including reasonable limitations on size, number, and time period within which they may be displayed, consistent with Texas Property Code Chapter 202, as it may be amended or any successor Texas statute, Texas Election Code Chapter 259, as it may be amended or any successor Texas statute, and any other applicable provisions of Texas law. One or more religious items, the display of which is motivated by the Owner's or occupant's sincere religious belief, provided that such display does not threaten the public health or safety, violate a law other than a law prohibiting the display of religious speech, or violate any applicable building line, setback requirement, or easement, is not attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole or fixture, and is not, in the Board's determination, patently offensive to a passerby for reasons other than its religious content, may be displayed.

Other signs, including "for sale" or "for lease" signs, banners, posters, placards, billboards, advertisements, bulletins, announcements, symbols, displays, or any other manifestation of a message, slogan, or symbol of any kind **shall not** be displayed upon or visible from the outside of a Unit or placed or displayed anywhere within the Community; provided those signs installed during the initial construction of the Community by Founder, those signs required by Texas law, and those signs permitted pursuant to the Design Guidelines shall be permitted.

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

(d) *Activities Within Dwellings.* No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

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

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

(g) *Abridging Existing Rights.* No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

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

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

(j) *Interference with Private Amenities.* No Rule or action by the Association or Board shall interfere with the use or operation of any property owned or administered by a Private Amenity.

7.4. Owners' Acknowledgment and Notice to Purchasers.

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


7.5. Use of Bodies of Water within Brookside at Fields.

Until such time as conveyed by Founder to the Association, if at all, a majority of the storm-water drainage or retention facilities and bodies of water within Brookside at Fields shall not be owned by the Association. Use of the storm-water drainage or retention facilities and bodies of water within Brookside at Fields shall be restricted by the access rights and easements granted by the owner of the storm-water drainage or retention facilities and bodies of water to the Association and the Owners. There shall be no fishing, swimming, boating, use of personal floatation devices, or other active use of the storm-water drainage or retention facilities and bodies of water within Brookside at Fields except in strict compliance with Rules the Founder or the Association adopt. When and if conveyed to the Association, the storm-water drainage or retention facilities and bodies of water within Brookside at Fields may only be used in accordance with the rules established by the Association. Neither the owner of the storm-water drainage or retention facilities and bodies of water, Founder, any of their officers, directors, or partners or any officer or director of any partner, nor the Association shall be responsible for any loss, damage, injury, or death to any Person or property arising out of the authorized or unauthorized use of the storm-water drainage or retention facilities and bodies of water within Brookside at Fields. All Persons are hereby advised that no representations or warranties have been or are made by Founder, the Association, or by any Person acting on behalf of any of the foregoing with regard to the maintenance or operation of the stormwater drainage or retention facilities and bodies of water within Brookside at Fields including, but not limited to, the ability to fish, or otherwise use such bodies of water for any purpose, or that the water level shall remain at certain levels. The water levels may be raised or lowered at any time and may also be raised or lowered for any length of time, at any time, as may be required by a governmental agency or entity.

ARTICLE 8 COMPLIANCE AND ENFORCEMENT

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

8.1. Compliance.

 All Owners and occupants, as well as their tenants, guests, and invitees, are required to abide by the Governing Documents. If any of the above fail or refuse to obey the Governing Documents, the Owner may be subject to various sanctions, including fines and the loss of the right to use the Common Areas.

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

8.2. Remedies for Non-Compliance.

The Association, the Founder and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents subject to the terms of this Charter and Article 9 of the By-Laws. In addition, the Board may impose sanctions for violation of the Gov-

erning Documents, including those listed below and any others described elsewhere in the Governing Documents. Except as specifically set forth in this Charter, the City of Frisco shall have no authority to enforce the Governing Documents.

(a) *Sanctions Requiring Compliance with Enforcement Provisions of the By-Laws.* Subject to compliance with the enforcement provisions set forth in Article 9 of the By-Laws, the Association may:

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

(ii) except as limited by Texas law, suspend an Owner's right to vote;

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation; provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Association provides to the Unit or occupants thereof;

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

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

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

(viii) record or otherwise publish a notice of violation with respect to any Unit on which a violation exists (including any violation relating to non-compliance with the Design Guidelines or the process or approval requirements under Article 5);

(ix) subject to Texas Property Code Sections 209.006(a) and 209.0065, as applicable, report any delinquency in paying amounts due to the Association to a credit reporting agency; and

(x) file a suit at law or in equity against an Owner for any action which, by the terms of Article 9 of the By-Laws, is subject to the procedures set forth therein.

Notwithstanding the above, if within six months after the Owner has been given notice and the opportunity to exercise any rights to which the Owner was entitled under Article 9 of the By-Laws, the violation continues, is repeated, or recurs, the Board may impose any of the above sanctions without further compliance with Article 9 of the By-Laws.

(b) *Other Sanctions.* To the extent permitted by Texas law, the Association may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing, and the enforcement procedures in Arti-

cle 9 of the By-Laws shall not apply to these actions:

(i) exercise self-help or take action to abate a violation on a Unit or Other Properties in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) and levy a Specific Assessment against the Unit and the Owner thereof for all costs reasonably incurred in so doing, except that any action to collect such Specific Assessment shall be subject to compliance with the procedures set forth Article 9 of the By-Laws;

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

(iii) require an Owner, Neighborhood Association, or other Person responsible for maintenance under Article 6, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the property for which such Person is responsible, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner, Neighborhood Association, or other Person responsible for maintenance pursuant to Article 6 fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass;

(v) bringing suit (A) in equity for a temporary restraining order or temporary injunctive relief to stop or prevent any violation or (B) which includes foreclosure as a cause of action; or

(vi) any other action for which notice and an opportunity for a hearing is not required under the Texas Property Code, including Sec-

tion 209.007, as it may be amended or any successor Texas statute thereof.

(c) *Additional Powers Relating to Neighborhood Associations.* In addition to the foregoing sanctions, the Association shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

8.3. Board Decision to Pursue Enforcement Action.

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

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

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

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

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

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

8.4. Attorneys Fees and Costs.

In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

8.5. Enforcement of Ordinances.

The Association, by contract or agreement, may enforce applicable city and county ordinances. In addition, the City of Frisco and Denton County, Texas may enforce applicable ordinances within Brookside at Fields.

NOTES AND THOUGHTS

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PART THREE: ASSOCIATION OPERATIONS

ARTICLE 9 PROPERTY MANAGEMENT

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of the Community. This Article establishes the Association's obligation to accept property that the Founder designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of the Community.

9.1. Acceptance and Control of Association Property.

(a) Transfers and Conveyances by Founder.

The Founder and its designees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. **All such property shall be accepted by the Association "AS IS" without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements thereon or thereto, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials which has been or will be used in such property or repairs.**

Upon the Founder's written request, the Association shall reconvey to the Founder, or any Founder Affiliate or Builder, any unimproved real property that the Founder, Founder Affiliate, or Builder, as applicable, originally conveyed to

the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

The Founder shall have the right to convey any property to the Association as Common Area subject to easements permitting persons who are not members of the Association to use and enjoy such Common Area upon payment to the Association of reasonable use fees. In addition, the Founder may convey Common Area subject to easements over any parking areas thereon for ingress, egress, and vehicular parking by the owners or operators of other parcels of property in Brookside at Fields identified in such easement and their respective employees, designees, members, guests, and invitees; provided, any such parking easement or other documents recorded with such easement shall require the owner of the property benefitted by such easement to contribute to the costs of maintaining such parking area in accordance with a reasonable allocation of such costs as determined by the Founder and set forth in the such easement or other document.

The Founder may also transfer and assign to the Association any continuing obligations and responsibilities under development agreements or conditions of development approvals relating to Brookside at Fields, including any obligation to post or maintain maintenance bonds on improvements within public rights-of-way or other portions of the Area of Common Responsibility. The Association shall accept, assume, and fulfill all such obligations and responsibilities as the Founder shall assign to it.

(b) Expansion of Facilities by Association.

Subject to the procedures set forth in this subsection (b), the Association, with the consent of the Founder during the Development and Sale Peri-

od, may contract with owners of recreational and social facilities in Fields to obtain use privileges in such facilities for Owners and occupants of Units as a Common Expense (as described in Article 12). This subsection (b) shall apply only to contracts which the Association proposes to enter into; it shall not limit the rights of the Founder to expand the Common Area by granting property interests to the Association pursuant to subsection 9.1(a).

At least 30 days prior to entering into any such contract, the Board shall give notice to the Owners, by any means authorized in the By-Laws, of its intent to enter into such contract and shall provide at least a 30-day period in which Owners and Voting Delegates may file comments with the Board, which comments may be submitted by mail, telephone facsimile, electronic mail, and by any other means the Board finds appropriate. The notice shall summarize the material terms of the proposed contract including, without limitation, the duration of the proposed contract, the privileges to be afforded to Owners and occupants under the proposed contract, the total cost and other consideration to be paid by the Association for such privileges, any provision for future increases in such cost, and the payment terms. The notice shall also disclose the cost per Unit and the anticipated impact of the proposed contract on the budget and assessments then being levied by the Association. A copy of the proposed contract shall be made available for inspection by Owners upon request.

The Board may (but shall not be obligated to) cause the Association to enter into such contract on the terms set forth in the notice unless written objections are filed with the Board during the specified comment period by Owners or Voting Delegates representing more than 25% of the total votes in the Association.

(c) Management and Control. The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses,

or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

9.2. Maintenance of Area of Common Responsibility.

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

(a) the Common Area and all improvements thereon; and

(b) any private streets and alleys within the Community that serve two or more Units, to the extent such streets or alleys are not the responsibility of a governmental or quasi-governmental body, or are not maintained to the Community-Wide Standard by the responsible party; and

(c) landscaping, street furniture (i.e., benches, trash cans, etc.), community identification, directional and traffic signage, and street lights installed within public rights-of-way and public parks within or abutting the Community, to the extent that the same are not the responsibility of a governmental or quasi-governmental body, or the Owner of the adjacent property pursuant to Section 6.1, or are not maintained to the Community-Wide Standard by the responsible party; and

(d) such portions of any additional property as may be dictated by the Founder, this Charter, any Supplement, any Covenant to Share Costs recorded pursuant to Section 9.5, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association; and

(e) any property and facilities that the Founder owns and makes available, on a temporary or permanent basis, for the primary use and

enjoyment of the Association and its members. The Founder shall identify any such property and facilities by written notice to the Association and they shall remain part of the Area of Common Responsibility until the Founder revokes such privilege of use and enjoyment by written notice to the Association.

The Association shall also be responsible for proper functioning of the stormwater drainage system serving the Community, including maintenance, repair and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system. It shall have no responsibility for landscaping or other maintenance of Units burdened by stormwater drainage easements unless otherwise specifically set forth in a Supplement or in a recorded agreement or plat.

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

Notwithstanding the above, the Association may delegate any of its maintenance responsibilities hereunder to the Joint Committee by agreement with the Joint Committee, and any portion of the Common Area maybe made part of the Joint Committee's "Area of Common Responsibility," as such term is defined in the Joint Committee governance documents. No such delegation shall be revoked without the written consent of the Joint Committee. The Association shall specifically be authorized to enter into agreements with the Joint Committee, the Commercial Association, the City of Frisco, Denton County, Texas and other owners of property in or near Fields for the sharing of maintenance responsibility and/or costs associated with any

property or services which the Board deems to benefit the Association and its members.


The maintenance responsibilities of the Association with respect to amenities, private streets, creeks and tributaries, thoroughfare screening and any other portion of the Common Area shall not be amended without the prior approval of the City of Frisco.

The Association shall indemnify and the Owners and their respective heirs, executors, administrators, devisees, personal representatives, successors or assigns agree to release and hold harmless the City of Frisco for any damages, injuries (including death), and/or liability resulting from the maintenance or operation of any portion of the Common Area or the maintenance of any property which is the responsibility of the Association pursuant to this Charter or the City of Frisco ordinances and regulations.

9.3. Discontinuation of Operation.

The Association shall maintain the Common Area facilities in continuous operation unless the Founder, during the Development and Sale Period, and Voting Delegates representing 75% of the total votes in the Association, consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall also require the approval in writing of at least 75% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Common Area is assigned. This section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, nor to preclude temporary closures or interruptions in operation as the Board may determine appropriate to perform cleaning, maintenance or repairs.

9.4. Restoring Damaged Improvements.

 This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible not to repair or rebuild if the Owners who benefit from the Common Area do not want it anymore.

In the event of damage to or destruction of any portion of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

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

(a) this Charter has terminated pursuant to Section 21.1;

(b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety; or

(c) the Founder, during the Development and Sale Period, and Voting Delegates entitled to cast at least 67% of the total votes in the Association, or in the case of damage or loss to Limited Common Area, Owners of at least 67% of the Units to which such Limited Common Area is assigned, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed, except that nothing herein shall limit the contractual rights of any holder of a deed of trust encumbering the Common Area to participate in such determination under the terms of

such deed of trust or any security agreement referenced therein.

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

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

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

9.5. Relationships with Other Properties.

The Founder may prepare, execute, and record a document creating a covenant to share costs obligating the Association or Owners of Units in the Community and the Commercial Association or Owners of Units in the Community to share costs of maintaining certain mutually beneficial properties and/or providing certain mutually beneficial services, as described in such document (a "Covenant to Share Costs"). Any Covenant to Share Costs may obligate the Asso-

ciation to provide maintenance and other services to such mutually beneficial properties and may authorize the Association to collect a specified portion of the costs it incurs from the owners of such other properties or any owners association having jurisdiction over such other properties. In addition, the Association may contract with other entities, including the Founder, the City of Frisco, Denton County, Texas, any owners association, or the owner of any neighboring property, to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

9.6. City of Frisco Screening Regulations.

The Association shall be responsible for maintenance of all screening walls and fences, landscaping, landscape edges, and landscape irrigation systems located within the Community or between the Community and any adjacent public thoroughfare as shown on any plat of the Community, in accordance with City of Frisco ordinances and regulations. The City of Frisco may, but is not obligated to, inspect such items. Should the Association fail to perform such maintenance, then the City of Frisco shall have the right, but not the obligation, after due notice to the Association, to perform such maintenance and recover all costs incurred from the Association or assess all property in the Community for such costs, which assessments may be secured by a lien in favor of the City of Frisco.

9.7. City of Frisco Rights.

If the Association fails to carry out any maintenance obligations established pursuant to the City of Frisco ordinances and regulations, the City of Frisco or its lawful agents shall have the right and authority, after due notice to the Association: (i) to perform the responsibilities of the Association; and (ii) to assess the Association and/or the Owners on a pro rata basis for all costs incurred by the City of Frisco in performing such responsibilities. The City of Frisco shall have all liens and lien rights granted to the Association to enforce the assessments required by this Charter and/or the right to avail itself of any

other enforcement actions available to the City of Frisco pursuant to State of Texas law and/or City of Frisco regulations.

NOTES AND THOUGHTS

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ARTICLE 10 PROVISION OF SERVICES

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

10.1. Provision of Services to Units.

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

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

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

10.2. Provision of Services to Service Areas.

(a) *Service Areas Designated by Founder.* The Association shall provide services to Units within any Service Area designated by the Founder pursuant to Section 3.3 as required by the terms of any Supplement applicable to the Service Area.

(b) *Service Areas Designated by Board.* In addition to Service Areas which the Founder may designate pursuant to Section 3.3, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association (i) special benefits or services that are not provided to all Units, or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 12.2(c).

10.3. Community Technology.

(a) *Technology Systems.* Without limiting the generality of Sections 10.1 and 10.2, the Founder is specifically authorized, **but is not ob-**

ligated to, to provide, or to enter into and assign to the Association or to cause the Association to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, telephone, and security monitoring), and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("**Technology Systems**"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Technology Systems as the Founder or the Board determines appropriate. The Association shall have no obligation to utilize any particular provider(s). However, except for cause (as defined by written agreement with the provider), the Association may not, without the Founder's consent, terminate or refuse to renew any contract entered into during the Founder Control Period.

(b) *Opportunities for Community Interaction.* The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent Texas law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

NOTES AND THOUGHTS

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ARTICLE 11 ASSOCIATION INSURANCE

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

11.1. Required Coverages.

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

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

(i) the Common Area;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Service Area, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

In addition, if a Supplement so specifies, the Association shall obtain and maintain property insurance on the insurable improvements within a Service Area, which insurance shall comply with the above requirements.

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

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

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


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

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

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

insurance coverage and higher limits than this section requires.

11.2. Deductibles.

 *The Board may hold any Persons who cause damage to insured improvements responsible for the insurance deductible payable on any insurance claim related to such damage.*

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

11.3. Policy Requirements.

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

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

(a) be written with a company authorized to do business in Texas which satisfies the requirements of the Federal National Mortgage Association ("**Fannie Mae**"), or such other secondary

mortgage market agencies or federal agencies as the Board deems appropriate;

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

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

(d) contain an inflation guard endorsement;

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

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

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

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

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

In addition, the Board shall use reasonable efforts to secure insurance policies that list the

Owners (as a class) as additional insureds and provide:

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

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

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

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

(e) a cross liability provision; and

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

11.4. Insurance Premiums.

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense unless the Board reasonably determines that other treatment of the premiums is more appropriate.

NOTES AND THOUGHTS

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ARTICLE 12 ASSOCIATION FINANCES

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

12.1. Association Expenses.

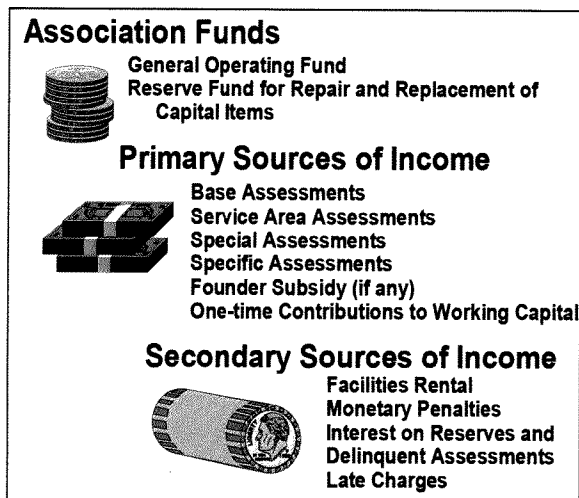


Diagram 12.1

(a) *Common Expenses.* Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**" Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Founder Control Period for new development or original construc-

tion costs unless Voting Delegates representing a majority of the Units owned by persons other than the Founder approve such expenditure. This approval requirement shall not apply to payments due under any leases of capital improvements which are commonly leased in lieu of purchasing, such as street lights.

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

(b) *Service Area Expenses.* All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of Limited Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses.**" Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Service Areas receiving the same service.

12.2. Budgeting for and Allocating Association Expenses.

(a) *Preparation of Budget.* At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year ("**General Budget**"). In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of

such Service Area in the coming year ("**Service Area Budget**").

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable, as the board finds necessary or appropriate. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units (including amounts to which the Association is entitled pursuant to any Covenant to Share Costs established pursuant to Section 9.5 or other agreement), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

(b) *Calculation of Base Assessments.* The total budgeted Common Expenses, less any income anticipated from sources other than assessments against the Units (including any Covenant to Share Costs established pursuant to Section 9.5), shall be allocated equally among all Units subject to assessment under Section 12.5 and levied as a "**Base Assessment**," subject to the provisions of subsection (e).

(c) *Calculation of Service Area Assessments.* The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Units in the Service Area that are subject to assessment under Section 12.5 and levied as a "**Service Area Assessment**," subject to

the provisions of subsection (e). Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Unit in the Service Area, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

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

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

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

ically become effective unless disapproved at a meeting by Owners of at least 75% of the Units within the Service Area and by the Founder Member, if such exists, except that the right to disapprove a Service Area Budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the General Budget, on petition of the Voting Delegates as provided for special meetings in the By-Laws, and in the case of a Service Area Budget, on petition of Owners of at least 67% of the Units within the Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, increased by 10%, shall continue in effect until a new budget is determined.

(f) **Budget Revisions.** The Board may revise the budget and adjust the Base Assessment or Service Area Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in Section 12.2(e) above, except that the provisions of Section 12.2(e) for disapproval of a budget shall not apply to any such revision and adjustment necessary for additional funds to cover any expenses related to any of the following (each an "Extraordinary Expenditure"):

- (i) required by court order;
- (ii) necessary to repair or provide maintenance to any portion of the Area of Common Responsibility to address an imminent threat to personal safety or any circumstance which the Board could not reasonably have foreseen at the time of preparation of the applicable budget; or

(iii) necessary for the Association to defend itself in litigation, arbitration, or other legal or administrative actions brought against it.

12.3. Special Assessments.

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

12.4. Specific Assessments.

The Association may levy "Specific Assessments" against a particular Unit or Other Properties as follows:

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

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

(c) to cover costs incurred in bringing the Unit or Other Properties into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner or Person responsible for maintenance of Other Properties prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (c);

(d) to cover the Unit's pro rata share of any costs that the Association incurs in bringing the Service Area of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Owners of Units in the Service Area and an opportunity for such Owners to be heard before levying any such assessment;

(e) to cover any deductible assessed against the Owner of Unit pursuant to Section 11.2; and

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

12.5. Authority to Assess Owners; Time of Payment.

(a) The Founder hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the date on which the Unit is made subject to this Charter or the effective date of the Association's first General Budget, whichever is later; provided, until such date a certificate of occupan-

cy has been issued to a Unit owned by Builders designated by Founder, the Unit shall be assessed at the rate of 50% of the Base Assessment or Service Area Assessment, if any, levied on other Units similarly situated. The first annual Base Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

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

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

requested and agreed to by a delinquent Owner, the Association shall not sue to collect any delinquent amounts or to foreclose its lien under Section 12.7 so long as the Owner is not in default under the terms of such alternative payment plan.


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

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

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

The Association shall not report any delinquency to a credit reporting service except in compliance with the requirements of Texas Property Code Sections 209.006(a) and 209.0065.

12.6. Obligation for Assessments.

 By buying a Unit in the Community each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, that Owner will be charged late fees on all past due amounts. Owners may not claim a reduction in their assessments due to action or inaction by the Association or the Joint Committee.

(a) *Personal Obligation.* By accepting title to a Unit or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Texas law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full; provided, an Owner shall not be liable for fees of a collection agent retained by the Association except as provided in Texas Property Code Sections 209.0064 and 209.008, as they may be amended or any successor Texas statutes thereof. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

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

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units or to

all Units within the Service Area to which the Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Joint Committee, Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(b) *Founder's Financial Obligations to Association.* The Founder shall be liable for assessments on any Units it owns that are subject to assessment under this section, except that during the Founder Control Period, the Founder may satisfy its obligation to pay Base Assessments and Special Assessments for Common Expenses on Units it owns either by paying such assessments in the same manner as any other Owner, or by paying (i) any shortfall under the applicable budget resulting from events other than failure of other Owners to pay their assessments, and (ii) any budgeted contributions to reserves in accordance with the applicable budget. After termination of the Founder Control Period, the Founder shall pay Base Assessments on any Units it owns that are subject to assessment under Section 12.5 in the same manner as any other Owner liable for such assessments.


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

(c) *Assessment Statement.* Within seven days after receipt of a written request from any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Association's registered agent or designee, the Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Unit, the amount of current periodic assessments, and the date on which such as-

essment becomes or became due, and any credit for advanced payments or prepaid items.

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

12.7. Lien for Assessments.

 If an Owner does not pay his or her assessments on time, the Association may foreclose its lien on the Owner's Unit, causing it to be sold to pay the past due assessments. The Association may also sue an Owner in court to recover past due assessments.

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

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

(b) *Enforcement of Lien.* Subject to Section 12.5 and this subsection (b), **the Association's lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Texas**

Property Code Section 51.002, as it may be amended or any successor Texas statute thereof, in like manner of any deed of trust on real property, after compliance with the procedures set forth in Chapters 51 and 209 of the Texas Property Code, as it may be amended or any successor Texas statute thereof, if applicable. Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Texas Property Code Section 51.002, as it may be amended or any successor Texas statute thereof. The Association shall not foreclose its lien if the debt secured by the lien consists solely of (i) fines or attorneys fees associated with fines; or (ii) charges related to the compilation, production, or reproduction of information requested pursuant to the Owner's right to inspect the Association's books and records under the By-Laws or the request for a recount under Texas Property Code Section 209.0057, as it may be amended or any successor Texas statute thereof.

Notwithstanding the above, prior to foreclosing on any Unit as to which an Eligible Holder (as defined in Section 15.1) is a Mortgagee, the Association shall provide the Eligible Holder at least 60 days written notice of the foreclosure and an opportunity to cure the default during such notice period.

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

Subject to Section 12.5, the Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to

pursuing any and all remedies allowed by law to enforce the lien.

(c) *Effect of Sale or Transfer.* Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments, except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish the Association's lien for assessments which became payable prior to such sale or transfer. A purchaser at a foreclosure sale or subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such foreclosure. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

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

12.8. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

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

(b) Any property owned by or dedicated to and accepted by any governmental authority or public utility; and

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members or owned by the members of a Neighborhood Association as tenants-in-common.

In addition, the Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of

the Internal Revenue Code so long as such Persons own property subject to this Charter for purposes listed in Section 501(c) of the Internal Revenue Code.

12.9. Capitalization of Association.

Upon acquisition of record title to a Unit by any Person other than the Founder, a Founder Affiliate, or a Builder designated by the Founder shall, at the time of taking title to the Unit, make a contribution to the working capital of the Association in an amount equal to one-fourth of the annual Base Assessment per Unit for that year. The amount due hereunder shall constitute a Specific Assessment against the Unit pursuant to Section 12.4(f) of this Charter and shall be in addition to, not in lieu of, the annual Base Assessment, and any Service Area Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title for its use in covering initial start-up expenses, operating expenses, and other expenses it incurs pursuant to this Charter and the By-Laws.

12.10. Use and Consumption Fees.

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

12.11. Lifestyle Fees Upon Transfer of Title.

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

under Section 12.7. Each Owner shall notify the Association's Secretary or designee at least seven days prior to the scheduled closing and provide the name of the buyer, the date of title transfer, and other information the Board may reasonably require.

(b) *Purpose.* The Lifestyle Fees shall be placed in a segregated account and used to provide funding for activities, programs, and other uses which enhance the welfare and lifestyle of residents and the sense of community within and outside of Brookside at Fields, as the Board may determine appropriate. The Board may appoint a Lifestyle Committee in accordance with the By-Laws to develop a budget for and make recommendations to the Board as to use of the Lifestyle Fees. For example, Lifestyle Fees might be used to sponsor or fund, or to assist one or more tax-exempt entities in sponsoring or funding:

- cultural and artistic programs and activities;
- social activities and events such as festivals and holiday celebrations and activities designed to promote interaction and community pride;
- a community website, intranet, or other technology to facilitate communication and participation in Association activities;
- youth programs and charter clubs;
- health and wellness programs, recreational leagues, and other programs to encourage physical fitness, healthy lifestyles, and social interaction;
- educational programs to encourage life-long learning;
- community improvement and beautification;
- recycling, conservation, and other environmental programs;

- preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas and sponsorship of educational programs and activities that contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding Brookside at Fields;
- making of grants and contributions to non-profit or tax-exempt entities whose missions benefit the Community and the larger community of which it is a part; and
- other services, activities and programs designed to enhance the welfare and lifestyle of residents and the sense of community within and outside of Brookside at Fields.

Lifestyle Fees shall not be used to engage in any political activity, including lobbying, protesting, or taking or asserting a position in any zoning matter.

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

(c) *Fee Determination.* The Board shall have the sole discretion to determine the amount of and method of calculating the Lifestyle Fee. The fee may be fixed or based upon a sliding scale that varies according to the "gross sales price" of the property or any other factor the Board deems appropriate. However, the Life-

style Fee may not exceed one-half of one percent (0.5%) of the Unit's gross sales price, and in the case of a transfer other than a sale at fair market value, the average of the Lifestyle Fee paid upon the last five non-exempt transfers. The "gross sales price," for purposes of this section, shall mean the total amount paid by the purchaser for the real property, excluding customary closing costs.

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

(i) by or to the Founder or a Founder Affiliate;

(ii) by or to a Builder designated by the Founder who held title solely for purposes of development and resale or by or to an affiliate of Builder holding title to unimproved Units for the purposes of sale to a Builder designated by the Founder for development and resale;

(iii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;

(iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership or beneficial interest in such entity, the Lifestyle Fee shall become due;

(vi) to an institutional lender pursuant to the terms of its Mortgage or upon foreclosure of its Mortgage, and to the first purchaser of the Unit from such institutional lender;

(vii) to a person who purchased the Unit at the foreclosure sale upon foreclosure of a Mortgage held by an institutional lender; or

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

NOTES AND THOUGHTS


* * *

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

ARTICLE 13 EASEMENTS

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

13.1. Easements in Common Area.

 An easement is one person's right to go onto the property of another.

The Founder grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) Certain Owners' rights to the exclusive use of those portions of the Common Area designated as Limited Common Area; and
- (d) The Board's right to:
 - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting

the number of guests who may use the Common Area, and to charge use fees for such use;

- (ii) suspend an Owner's right to use Common Area facilities;

- (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Charter;

- (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

- (v) rent any portion of any clubhouse or other Common Area facility on an exclusive or non-exclusive short-term basis to any Person;


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

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

- (e) the right of the Founder and its designees to use the Common Area pursuant to Section 18.2.

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

13.2. Easements of Encroachment.

 An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, inadvertent encroachments to remain.

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

13.3. Easements for Utilities, Etc.

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

(i) install utilities and infrastructure to serve the Community, other Technology Systems, other "Community Systems" (as defined in the Covenant) security and similar systems, and drainage systems, and drainage systems to serve any Private Amenity;

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

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

(iv) access and read utility meters.

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

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

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

13.4. Easements to Serve Additional Property.

The Founder hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Charter. This easement includes,

but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property. This easement shall also include, without limitation, the right to make any or all of the Common Area facilities available on a temporary or permanent basis to owners of any portion of the property described on Exhibit "B."

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

13.5. Easements for Maintenance, Emergency, and Enforcement.



The Association may come onto the exterior portions of your Unit to do maintenance or to address violations of the covenants. This section describes the extent of the Association's right in this regard.

By this Charter, the Founder grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Articles 6 and 9 and its enforcement rights under Article 8. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

13.6. Easement for Fence and Landscape Maintenance.

The Founder reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement over portions of the Community lying within 20 feet of the perimeter boundary of the Community, and within 20 feet of the back-of-curb of any public or private street, alley, or walkway within or adjacent to the Community, for the purpose of constructing, installing, maintaining, repairing, and replacing perimeter fencing or walls and landscaping along the perimeter boundary of the Community or along public or private streets, alleys, or walkways adjacent to or within the Community. However, nothing in this section shall obligate the Founder, the Association, or any Builder to install fencing, walls, or landscaping, the installation of such items being in the

sole discretion of the Founder and the Association.

13.7. Easements for Lake, Creek and Pond Maintenance and Flood Water.

The Founder reserves for itself, and grants to the Association, and their respective successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon the storm-water drainage or retention facilities, bodies of water and wetlands located within the Area of Common Responsibility to: (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Founder, the Association, and their respective successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains storm-water drainage or retention facilities, bodies of water or wetlands, to the extent reasonably necessary to exercise their rights under this section.

The Founder further reserves for itself, and grants to the Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of storm-water drainage or retention facilities, bodies of water and wetlands within the Community, in order to: (i) temporarily flood and back water upon and maintain water over such property; (ii) alter in any manner and generally maintain the storm-water drainage or retention facilities, bodies of water and wetlands within the Area of Common Responsibility; and (iii) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Founder or any other Person liable for damage resulting from

flooding due to weather events or other natural occurrences.

13.8. Private Streets and Alleys.

(a) *Rights of Association and Owners.* Until such time as the Founder conveys any private street or alley within the Community ("**Private Streets**") to the Association, or dedicates it to the general public, the Private Street shall be subject to a temporary, nonexclusive easement for access, ingress, and egress for the benefit of the Association, each Unit and the Owner thereof, and each other portion of the Community.

Use of any Private Street shall be subject to and in accordance with any rights and easements set forth in this Charter, on the recorded plat, easements previously created for the benefit of property adjacent to the property described on Exhibits "A" and "B," such additional easements as the Founder deems appropriate and in any law, ordinance, or regulation governing the use of such street. Use of any Private Street may be restricted by plat or Supplement to the Owners of Units shown on the plat depicting such Private Street and their guests and invitees.

The existence of the easements described in this Section 13.8 shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Community, provided that the Association at all times maintains systems and/or procedures to permit entry of Persons authorized to exercise the easements granted in this section without unreasonable interference or delay.

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

vate Streets except while acting in their official capacities. The Association shall have the right to limit access for garbage collection purposes to such days of the week as the Board may specify. In addition, there is hereby established a non-exclusive easement for access, ingress, and egress over any Private Street to the City of Frisco and its personnel for the improvement and maintenance of any 100-year floodplain established within the Community. The Association shall reimburse the City of Frisco for any expenses incurred in the maintenance of the 100-year floodplain.

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

(c) *Rights of Founder.* Founder hereby reserves for itself, its agents, employees, successors, assigns, and other persons it may designate, an easement over the Private Streets for the purpose of constructing, maintaining, repairing, or rebuilding any subdivision improvements installed or to be installed in the Community and for performing any other work within the Community which the Founder deems reasonably necessary, in its discretion, or which the Founder is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Community. The Founder hereby authorizes the contractors, subcontractors, laborers, materialmen, and other Persons providing construction services and materials to any Unit to exercise this easement for access to such Unit, subject to such rules as the Association may adopt; however, during the Development and Sale Period, the Founder shall have the right to restrict use of all or portions of the Private Streets and designate alternate access for such Persons, and to revoke such authorization and prohibit the use of the

Private Streets by Persons who violate the Governing Documents or any agreement with the Founder.

Furthermore, Founder reserves for itself and affiliates of Founder a perpetual, non-exclusive easement of access to and use of the Private Streets and Common Areas in connection with the marketing and sale of other communities which Founder or any affiliates of Founder may be developing and marketing, in order to show the Community as an example of the Founder's developments.

NOTES AND THOUGHTS

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ARTICLE 14

PRIVATE AMENITIES

A golf course and various other recreational facilities may be located within or in the vicinity of the Community that are privately owned and operated by Persons other than the Association. Those facilities are not part of the Common Area of the Community, and ownership of property in the Community does not give any person the right to use them. This Article explains the right of the owners of those facilities to determine if and on what terms they wish to make their facilities available for use by Owners. It also establishes certain rights for the benefit of the owners of such facilities.

14.1. General

Any property and facilities located within, adjacent to, or near the Community which Persons other than the Association or the Joint Committee own and operate for recreational and related purposes are "**Private Amenities.**" The Private Amenities shall include, without limitation, any golf courses that are located and their related and supporting facilities and improvements. No Person gains any right to enter or to use any Private Amenity by virtue of membership in the Association or ownership or occupancy of a Unit. Access to and use of any Private Amenity is strictly subject to the rules and procedures of the owner of such Private Amenity.

Each Owner and occupant of a Unit acknowledges and agrees to refrain from, and to cause their respective guests and invitees to refrain from, entering upon a Private Amenity, including any portion of any golf course without the prior permission of the owner or operator of the Private Amenity and further acknowledge and agree that any such unauthorized entry may be deemed a trespass.

All Persons are hereby advised that no representations or warranties have been or are made by the Founder, the Association, any Builder, the

Joint Committee or by any Person acting on behalf of any of the foregoing with regard to the continuing ownership or operation of the Private Amenities. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument which the record owner of the Private Amenity executes.

Ownership or operation of any Private Amenity may change at any time. This may be for different reasons, such as (a) the sale to or assumption of operations by an independent Person, (b) establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity or (c) the conveyance of a Private Amenity to one or more affiliates of Founder. Consent of the Joint Committee, the Association, any Neighborhood Association, any Voting Delegate, or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity, subject to the terms of any written agreements entered into by such owners.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

14.2. View Impairment

The Founder, the Association, Builders or the owner of any Private Amenity, does not guarantee or represent that any view over and across the Private Amenity from Units or Common Areas adjacent to the Private Amenity will be pre-

served without impairment. Owners of the Private Amenities shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add and remove trees and other landscaping to the Private Amenities from time to time. In addition, the owner of any Private Amenity which includes a golf course may, in its sole and absolute discretion, but shall not be obligated to, change the location, configuration, size, landscaping, topography, hydrology, and elevation of the tees, bunkers, fairways, greens, buildings, improvements, landscaping, and water features on such golf course. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

14.3. Limitations on Amendments

In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Charter benefiting any Private Amenity, may be made without the written approval of the Private Amenities. However, the foregoing shall not apply to the Founder's amendments.

14.4. Jurisdiction and Cooperation

It is the Founder's intention that the Association and the Private Amenities shall cooperate to the maximum extent reasonably possible in the operation of the Community and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines.

14.5. Assessments

In consideration of the fact that the Private Amenities may benefit from maintenance of the roads, rights-of-way, and Common Areas within the Community, a Private Amenity and the Association may, but shall not be obligated to, enter into a contractual arrangement or covenant to

share costs obligating the Private Amenity to contribute funds for, among other things, shared property or services and/or a higher level of Common Area maintenance. During the Development and Sale Period, any such agreement or covenant shall require the written consent of Founder.

NOTES AND THOUGHTS

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ARTICLE 15

DISCLOSURES AND WAIVERS

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

15.1. Public Access.

Many of the streets within the Community will be public streets, and, as a result, the general public may be able to gain access to Common Areas, including, but not limited to, sidewalks, parks, trails and paths, and other neighborhood spots conducive to gathering and interaction. Other areas within Fields will also be open to the general public, including commercial areas, lakes, and rivers. The Association may, but shall have no obligation to, control public access or police Common Areas or other portions of the Community to identify and eject unauthorized persons. Neither the Founder nor the Association shall have any obligation to construct or install walls or fences or to implement any other measures to secure the perimeter boundaries of the Community or any part of the Community in order to prevent or restrict entry by the general public.

In addition, certain facilities and areas within the Community, including some facilities which are part of the Common Area, may specifically be open for use and enjoyment by the public and for special events, which may increase traffic and the number of vehicles being parked on Common Areas and other designated parking areas in the Community. The Founder may designate such facilities and areas as open to the public at the time the Founder makes them a part of the Area of Common Responsibility, or the Board may so designate at any time thereafter. **Each Owner and occupant of a Unit, by accepting any interest in a Unit or occupying a Unit, acknowledges**

that such public access may occur and agrees that neither the Founder nor the Association shall have no responsibility or liability for monitoring, restricting, or preventing such access, nor for any loss or damage that any person exercising such easements may cause.

15.2. Nonresidential and Neighboring Uses.

Fields is planned as a mixed-use community which has or is expected to have with nonresidential uses in close proximity to residential Units. There is no guarantee as to the specific retailers or types of businesses that may choose to locate in Fields or the hours that such businesses may be open. The particular mix of nonresidential uses within Fields may change from time to time. Such uses may include restaurants, bars, and other establishments that draw crowds and generate traffic, noises, odors, and light which may affect surrounding properties. By accepting title to or taking occupancy of a Unit, each Owner and occupant expressly assumes the risk of such Unit being affected by traffic, parking, noise, odors, and lights from the existence or operations of any permitted nonresidential use and Persons providing service or supplies in connection with such permitted use.

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

Each Owner agrees that the Founder, the Association, and any Founder Affiliate or agents shall not be liable to any Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, death, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of the Owner's Unit to any nonresidential use or other objectionable uses outside within or outside of Brookside at Fields, including without limitation, any claim arising in whole or in part from the negligence of the Founder, any Founder Affiliates, or their agents, or the Association. The Owner agrees to indemnify and hold harmless the Founder, Founder Affiliates and agents, and the Association against any and all such claims by Owner's visitors, tenants, and others upon such Owner's Unit.

15.3. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Joint Committee and the Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. **However, neither the Joint Committee, Association nor the Founder shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.**

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or

protection for which the system is designed or intended. **Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit, that the Joint Committee, Association, its Board and committees, and the Founder are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

15.4. Changes in Master Plan.

Each Owner acknowledges that Fields is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Association, nor any Neighborhood Association shall 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 Community, or (b) changes in the Master Plan as it relates to property outside the Community, without the Founder's prior written consent which consent may be granted or withheld in the Founder's discretion.

15.5. View Impairment.

Neither the Founder, the Joint Committee nor the Association guarantee or represent that any view over and across the Units, any open space within Brookside at Fields, any body of water, or any golf course or other Private Amenities will be preserved without impairment. Neither the Founder, the Joint Committee nor the Association shall have any obligation to relocate, prune, or thin trees or other landscaping to provide or maintain views except as may otherwise be required under a separate covenant or agreement. The Association (with respect to the Common Area) shall have the right to add and remove trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

15.6. Interruptions in Technology Systems and Services.

Each Owner acknowledges that interruptions in cable television and other Technology Systems and services will occur from time to time. The Founder or any of their respective successors or assigns shall not be liable for, and no Technology System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Technology Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

15.7. Noise from Water and Sewer Operations.

The Association and the Private Amenities may make use of pumps, pipes and lines for pumping and transport of water which may be located within easements for such purpose on Units. The pumping and transport of water within the Community may generate noise which is audible to occupants of Units and other persons in the vicinity of such pumps, pipes, or lines. Likewise, the sewage system serving the Community may require the installation and operation of sewer lift stations at which may generate motor noise when operating that may be audible to occupants of Units and other persons in the vicinity of such lift stations.

Neither the owner or operator of the Private Amenities, the Founder, Builders, the Association, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall have any duty to take action to abate noise from any of the foregoing activities, nor shall any of them be liable for any claim of damages or injury to any Person or property arising out of or related to noise resulting from any of the foregoing activities.

15.8. Notices and Disclaimers as to Future Development Activity.

Each Owner acknowledges that construction and development activities will be taking place in Fields until Fields is completely built out and

thereafter as properties are improved, repaired, and modified from time to time. There may be some inconvenience and disturbance during the course of such activities, including such things as construction noise, traffic diversions, and dust and noise emanating from the property upon which such activities are occurring. Neither the Founder nor the Association shall have any duty to take action to abate such inconveniences or disturbances, nor shall either have any liability for personal injury or property damage resulting from such activities or entry into such areas.

15.9. Water Management.

Each Owner acknowledges and agrees that wetlands, storm-water drainage or retention facilities and bodies of water within or adjacent to the Community are not designed as aesthetic features and due to fluctuations in water elevations within the immediate area, water levels will rise and fall. Each Owner further acknowledges and agrees that neither the Founder nor the Association has any control over such elevations. Each Owner agrees to release and discharge the Founder, Founder Affiliates, and the Association from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys fees and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water elevations. Owners shall not alter, modify, expand, or fill any the storm-water drainage or retention facilities, bodies of water or wetlands located within or in the vicinity of the Association without the prior written approval of the Founder and any local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

Some Units are located adjacent to Common Area or other property containing lakes, ponds, or stormwater detention or retention facilities that may from time to time contain water. Owners and occupants of such Units have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear, or otherwise disturb vegetation within natural areas between the boundary

of the Unit and the water's edge, or within the nondisturbance buffer on any Unit, except as may specifically be authorized in writing by the Association or any governmental agency with jurisdiction over such area.

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

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

15.11. Use of Nonpotable Water for Irrigation.

Each Owner and occupant of a Unit, and their respective guests and invitees, are advised that the water used to irrigate property within or adjacent to the Community may be treated effluent, re-use water or "gray" water. Although such water is considered safe for irrigation and limited contact, it is not suitable for human or animal consumption and should not be used for drinking, bathing, swimming, or any purpose other than irrigation.

15.12. Natural Conditions.

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

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

15.13. Utility Easements.

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

15.14. High Pressure Gas Lines.

There are high pressure gas lines within or adjacent to the Community. High pressure gas lines can pose a risk of rupture, explosion, fire, or other safety hazards to persons in the vicinity of such gas lines. Neither the Founder, Builders, the Association, nor the members, partners, affiliates, officers, directors, agents, or employees of any of the foregoing, have the ability to control the location or operation of such gas lines, and none of them shall have any liability for any damages or injury to any person or property arising out of or related to the location, operation, or existence of such gas lines.

15.15. Cattle Grazing.

Property situated within or adjacent to the Community may be used for ranching purposes, including, without limitation, maintaining and feeding cattle, and such other operations. In the course of such operations, sights, odors, and noises, including those generated by machinery and equipment, may emanate from such property. Such activities and noise is likely to go on 24 hours a day, seven days a week. The Founder, the Association, Builders and the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing shall not have any duty to take action to abate such sights, odors, or noise and none of them shall be liable for any claim of damages or injury to any Person or property arising out of or related to sights, odors and noises resulting from such operations.

In addition, such areas may be off-set by an electric fence, which could cause injury to persons or pets or damage to property coming in contact with it. The Founder, the Association, Builders and the members, partners, affiliates, officers, directors, agents, or employees of any of the foregoing shall not have any liability for personal injury or property damage resulting from contact with such electric fences or entry into such areas.

Each Owner shall take all necessary steps to prevent their household pets from interfering with ongoing operations. If an Owner's pet in-

terferes, such Owner shall be subject to sanctions for non-compliance set forth in Section 8.2.

15.16. Schools.

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

NOTES AND THOUGHTS

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ARTICLE 16

RIGHTS OF LENDERS

In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this Article sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders and guarantors of first Mortgages on Units in the Community. The provisions of this Article apply to both this Charter and to the By-Laws, notwithstanding any other provisions contained therein.

16.1. Notice to Association.

Each Owner shall be obligated to provide the Association with the name and street address of the holder or guarantor of any Mortgage encumbering such Owner's Unit. In addition, any institutional holder or guarantor of a Mortgage may provide written notice to the Association stating the name and street address of such holder or guarantor and the address of the Unit to which its Mortgage relates. All such holders and guarantors of Mortgages of which the Association has been notified are referred to as "**Eligible Holders.**"

16.2. Special Freddie Mac Provisions.

If a condominium exists within any portion of the Community, and so long as required by Freddie Mac, the provisions of this Section 16.2 shall apply.

(a) *Notices of Action.* If the Association has not been notified of the name and street address of the holder or guarantor of a Mortgage on a Unit, the Association may send any notice required to be sent to Mortgagees to the Unit address, and such act shall be deemed sufficient notice to the Mortgagee of such Unit for all purposes under this Charter and the By-Laws.

Each Eligible Holder will be entitled to timely written notice of:

(i) Any condemnation loss or any casualty loss which affects a material portion of the Community or any Unit on which there is a Mortgage held or guaranteed by such Eligible Holder;

(ii) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of a Unit subject to the Mortgage of such Eligible Holder;

(iii) A lapse, cancellation, or material modification of any insurance policy required to be maintained by the Association; and

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees.

(b) *Actions Requiring Approval of Eligible Holders.* In addition to such other approvals as may be under this Charter, By-Laws, or the Certificate of Formation, the following actions shall require the approval of Eligible Holders of first Mortgages that represent at least 51% of the Units subject to first Mortgages:

(i) Any action to terminate the legal status of the Community or the Association or to use insurance proceeds for any purpose other than to rebuild damaged Common Area improvements; and

(ii) Any amendment to this Charter, the By-Laws, or the Certificate of Formation of a material adverse nature to Eligible Holders of first Mortgages.

16.3. No Priority.

No provision of this Charter or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first

Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

NOTES AND THOUGHTS

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16.4. Failure of Mortgagee to Respond.

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

16.5. Amendment by Board.

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

16.6. Construction of Article 16.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Charter, the By-Laws, or Texas law for any of the acts set out in this Article.

PART FIVE: COMMUNITY DEVELOPMENT

ARTICLE 17 EXPANSION OF THE COMMUNITY

Due to the anticipated size of the Community when fully developed, the Community will be developed in phases. The Founder or the Association may expand the initial property submitted to the Charter as set forth in this Article.

17.1. Expansion by Founder.

From time to time, the Founder may submit to the terms of this Charter all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder. Unless otherwise indicated by the Founder in the Supplement subjecting property to this Charter, any property submitted to this Charter by the Founder shall automatically become subject to the Covenant. The Founder may unilaterally amend Exhibit "A" to this Charter at any time to provide further notice of any Units previously subjected to this Charter by reference in a recorded Supplement (including a plat, deed, or other instrument) subjecting a Unit to this Charter.

The Founder's right to expand the Community under this section expires when all property described in Exhibit "B" has been submitted to this Charter or 50 years after this Charter is recorded, whichever is earlier. Until then, the Founder may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Founder.

Nothing in this Charter shall require the Founder or any successor to submit additional property to this Charter or to develop any of the

property described in Exhibit "B" in any manner whatsoever. The Founder may submit different parcels of property to this Charter at different times. The Founder gives no assurances as to the boundaries of the parcels that may be submitted to this Charter, to the order in which the Founder may submit parcels of property to this Charter, or to whether buildings erected on any additional property submitted to this Charter will be compatible with other buildings in the Community in terms of architectural style, quality of construction, principal materials employed in construction, size, or price.

17.2. Expansion by the Association.

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

17.3. Additional Covenants and Easements.

Any Supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a

separate Supplement applicable to property previously submitted to this Charter. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

17.4. Effect of Filing a Supplement.

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

NOTES AND THOUGHTS

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ARTICLE 18

ADDITIONAL RIGHTS RESERVED TO THE FOUNDER

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

18.1. Special Development Rights.

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

(a) create Units, Common Areas, and Limited Common Areas, and to designate roadways, within any portion of Brookside at Fields which it owns;

(b) subdivide or combine any Unit or Units which it owns in order to create larger or additional Units, Common Areas, and/or Limited Common Areas;

(c) adjust the boundaries of any Units that it owns;

(d) cause the Association to convey or re-convey portions of any Common Area or Limited Common Area which is not improved with structures as necessary to make minor adjustments in boundary lines between such Common Area or Limited Common Area and adjacent properties; and

(e) amend this Charter or any Supplement to withdraw property from the Community and the coverage of this Charter, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder.

If the property is Common Area, the Association shall consent to such withdrawal.

18.2. Marketing and Sales Activities.

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

18.3. Right to Make Improvements, Replat.

During the Development and Sale Period, the Founder and its employees, agents, and designees shall have a right of access and use and an

easement over and upon all of the Common Area and streets and alleys within the Community for the purpose of:

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

(b) exercising any rights reserved to the Founder under this Charter; and

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

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

18.4. Right to Approve Changes in Community Standards.

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

18.5. Additional Covenants and Restrictions.

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

18.6. Exclusive Rights to Use Name of Development.


No Person other than the Founder or a Founder Affiliate shall use the name " Brookside at Fields" or any derivative of such name or in any logo or depiction associated with Brookside at Fields in any printed or promotional material or any Internet website without the Founder's

prior written consent. However, Owners may use the name "Brookside at Fields" in printed or promotional matter where such term is used solely to specify that particular property is located within the Community, and the Association and the Joint Committee shall be entitled to use the word "Brookside at Fields" in their names.

18.7. Technology Systems.

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

18.8. Easement to Inspect and Right to Correct.

 *The Founder, or someone it designates, may enter onto exterior portions of any Unit to inspect and correct problems with the Unit. The Founder must give the Owner of the Unit prior notice of such entry unless it is an emergency.*

The Founder 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 within the Community, including Units, and a perpetual nonexclusive easement of access throughout the

Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

18.9. Right to Notice of Design or Construction Claims.

Neither the Association, any Owner, or any other Person shall initiate the dispute resolution procedures under Article 19, nor retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder and any builder involved in the design or construction have been first notified in writing, by certified mail, and given an opportunity to meet with the Association and/or the Owner of any affected Unit to discuss the concerns, conduct their own inspection, and take action to remedy any problem in accordance with this section. Any notice to the Founder or builder involved in the design or construction under this section shall include a description of the alleged defect in design or construction ("**Defect**"), a description of any damage suffered as a result of the Defect, the date on which the Defect was discovered, and dates and times during ordinary business hours that the Founder or builder involved in the design or construction may meet with the Owner or the affected Unit or representative of the Association to conduct an inspection.

Nothing in this section shall obligate the Founder to inspect, repair, replace, or cure any alleged Defect. However, if the Founder elects to repair any Defect, it will so notify the Association (if the Defect involves Common Area) or the Owner of the affected Unit (if the Defect is in a

Unit) within 30 days after conducting such inspection and the Association or Owner shall permit the Founder, its contractors, subcontractors, and agents access as needed during ordinary business hours to make such repairs which, once begun, shall be completed within a reasonable time, subject to the nature of the repair and unforeseen circumstances. All applicable statutes of limitations shall be tolled during the period of inspection and cure under this Section 18.9, not to exceed the earlier of: (i) 120 days after the date the Founder receives written notice of the Defect in accordance with this section; or (ii) the Founder's delivery to the claimant of written notice that the Founder does not intend to take any further action to remedy the Defect.

In the event there is any dispute as to the adequacy of the proposed repairs to resolve the problem or as to whether repairs that the Founder, its contractors, or subcontractors have performed have remedied the Defect, the Founder may appoint a third-party inspector who is knowledgeable and experienced in construction of the type at issue to inspect the Defect and make a determination as to whether any proposed solution is adequate or as to whether the Defect has been remedied. The Association, the Founder, and the Owner of the affected Unit agree to accept and abide by the decision of the inspector.

If the Association or any Owner fails to comply with this Section 18.9, neither the Founder nor any Founder Affiliate shall be liable for any general, special, or consequential damages, costs, or diminution in value that might have been avoided had the Founder been given the notice and opportunity to repair described in this section.

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

Any or all of the Founder's special rights and obligations set forth in this Charter or the By-Laws may be transferred in whole or in part, temporarily or permanently, to other Persons. However, such a transfer shall not reduce an ob-

ligation nor enlarge a right beyond that which Founder has under this Charter or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Founder signs. The foregoing sentence shall not preclude the Founder from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in this Charter where the Founder does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Founder's consent to such exercise.

18.11. Rights to Stormwater Runoff and Water Reclamation.

The Founder reserves, for itself and its designees, the exclusive right to capture and reuse all rain water, surface water, and storm water runoff from the Community, except that the right to capture and reuse water from Units shall be limited to water that falls on or enters stormwater drainage or retention facilities, streets, alleys, Common Areas or public property. Each Owner agrees, by acceptance of title to a Unit, that the Founder and its designees shall have such right. Such right shall include an easement over the Community for access and for installation and maintenance of facilities and equipment to capture and transport such water and runoff.

The Founder or its designees may establish programs for reclamation of storm water runoff and waste water for appropriate uses within or outside the Community and may require Owners and occupants of Units to participate in such programs to the extent reasonably practical. No Owner or occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from his or her Unit. The Board shall have the right to establish restrictions on or prohibit outside use of potable water within the Community.

18.12. Termination of Rights.

Except as otherwise specified above, the rights contained in this Article shall not termi-

nate until the earlier of: (a) the period specified in the particular section; (b) termination of the Development and Sale Period; or (c) the Founder's recording of a written statement that all sales activity has ceased.

NOTES AND THOUGHTS

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ARTICLE 19

DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

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

19.1. Agreement to Encourage Resolution of Disputes Without Litigation.

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

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

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of Improvements within the Community, other than matters of aesthetic judgment under Article 5, which shall not be subject to review and shall not be subject to this Article;

except as otherwise provided in subsection (c).

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

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Charter (relating to creation and maintenance of Community standards);

(iii) any suit that does not include the Founder or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

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

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a), unless the party or parties against whom

the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article; and

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

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

19.2. Dispute Resolution Procedures.

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

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

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

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

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

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

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

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

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

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

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

(a) initiated during the Founder Control Period;

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

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

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

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

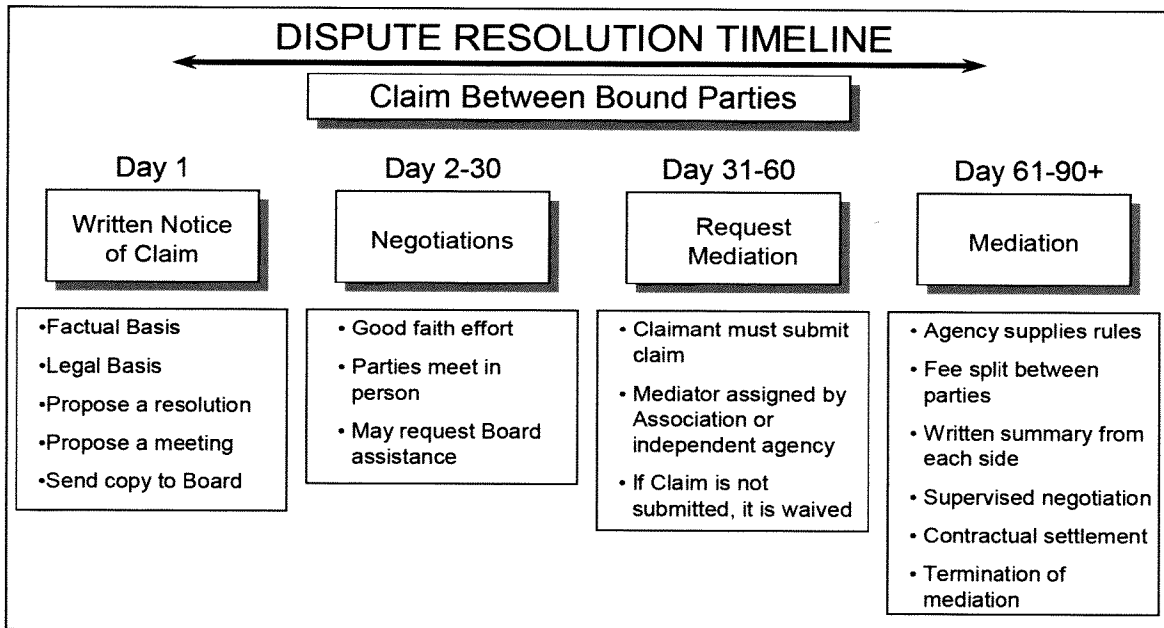


Diagram 19.2

19.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Voting Delegates entitled to cast 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

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

NOTES AND THOUGHTS

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PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

ARTICLE 20 CHANGES IN THE COMMON AREA


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

20.1. Assignment and Reassignment of Limited Common Area.

The Board may designate a portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and the vote of Voting Delegates representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or re-assigned. As long as the Founder owns any property subject to this Charter or which may become subject to this Charter in accordance with Article 17, any such assignment or reassignment shall also require the Founder's written consent.

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

20.2. Condemnation.

 A governmental entity such as a town, county, or state has the power to condemn property for its own uses but generally has to pay the value of the property to do so.

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

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Members representing at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring improvements shall apply; or

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

ceeds from the sale of Common Area under Section 20.4.

20.3. Partition.



Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

Except as permitted in this Charter, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter, with such approval as may be required under Section 20.4.

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

The Association may transfer or dedicate portions of the Common Area to any governmental or quasi-governmental entity or utility company, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

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

(b) if Common Area other than Limited Common Area, upon the written direction of Voting Delegates representing at least 75% of the total votes in the Association, and the Founder during the Development and Sale Period; or

(c) if Limited Common Area, upon written approval of Owners of at least 75% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines, unless otherwise directed by Voting Delegates at the time such sale or mortgage is authorized pursuant to Section 20.4(a). The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

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

NOTES AND THOUGHTS

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ARTICLE 21

TERMINATION AND AMENDMENT OF CHARTER

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

21.1. Term and Termination.

This Charter shall be effective and remain in effect for 50 years from the date of recording. Thereafter, this Charter shall be extended automatically for successive 10-year periods unless at least 67% of the then Owners sign a document stating that the Charter is terminated and that document is recorded within the year before any extension. In such case, this Charter shall terminate on the date specified in the termination document.

 There is an old concept of law known as the "Rule Against Perpetuities" which restricts how long covenants can affect the title to land. Many jurisdictions no longer observe such rule; however, where the rule applies, the term of the covenants cannot exceed 21 years after the death of a named person who is living at the time the covenants are recorded.

If any provision of this Charter would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

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

21.2. Amendment.

(a) *By the Founder.* In addition to the specific amendment rights granted elsewhere in this Charter, during the Founder Control Period, the Founder may unilaterally amend this Charter for any purpose. Thereafter, until termination of the Development and Sale Period, the Founder may unilaterally amend this Charter at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; or (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units.

(b) *By Owners.* Except as otherwise specifically provided above or elsewhere in this Charter, this Charter may be amended by affirmative vote or written consent, or any combination thereof, of Voting Delegates representing at least 67% of the total votes in the Association, including 67% of the total votes held by Owners other than the Founder. In addition, during the Development and Sale Period, any amendment pursuant to this subsection (b) shall also require the Founder's written consent.

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

(c) *Validity and Effective Date.* Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or the Founder Member (or the assignee of such right or privilege).

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

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

(d) *Exhibits.* Exhibits "A" and "B" are incorporated by this reference, and this Article shall govern amendment of those exhibits, except as otherwise specifically provided in this Charter. Exhibit "C" is incorporated by this reference and may be amended as provided in Article 7 or pursuant to this Section 21.2. Exhibits "D" and "E" are incorporated by this reference and may be amended as provided in those exhibits, respectively. Exhibit "F" is incorporated by this reference and may be amended and supplemented as provided in Section 5.3. Exhibit "G" is incorporated by this reference and may be amended by Founder in the event the Development Agreement is amended pursuant to its terms.

NOTES AND THOUGHTS

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EXHIBIT "A"

Land Initially Submitted to the Charter

All that certain real property and improvements thereon being a tract of land situated in the W. H. Bates Survey, Abstract No. 83, William E. Bates Survey, Abstract No. 90 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 941, City of Frisco, Denton County, Texas and being part of the remainder of Tract 3, a called 1,722.364 acre tract of land described in a Special Warranty Deed to FHQ Holdings, LP, as recorded in Instrument No. 2018-93106 of the Official Records of said county, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with a red plastic cap, stamped "KHA", found on the north right of way line of Panther Creek Parkway, a variable width right of way, as described in a deed to the City of Frisco, recorded in Instrument No. 2008-9796 of said Official Records and on the east line of Lone Star High School, an addition to the City of Frisco, according to the plat, recorded in Document No. 2009-135 of the Plat Records of said county, for the most westerly, southwest corner of said Tract 3;

THENCE North 00°13'48" West, leaving the north right-of-way line of said Panther Creek Parkway and along the east line of said Lone Star High School, common to the west line of said Tract 3, a distance of 437.66 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

THENCE leaving said common line and crossing said Tract 3, the following courses and distances:

North 89°46'12" East, a distance of 512.53 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

North 40°52'11" East, a distance of 439.31 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

North 82°27'31" East, a distance of 202.74 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

North 9°37'01" West, a distance of 84.86 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a tangent curve to the left having a central angle of 39°08'36", a radius of 220.00 feet, and a chord bearing and distance of North 29°11'19" West, 147.39 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 150.30 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the end of said curve;

North 48°45'37" West, a distance of 412.77 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 84°24'12" West, a distance of 14.38 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 40°32'32" West, a distance of 586.62 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a tangent curve to the right having a central angle of 48°54'42", a radius of 280.00 feet, and a chord bearing and distance of South 64°59'52" West, 231.83 feet;

In a southwesterly direction, with said curve to the right, an arc distance of 239.03 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the end of said curve, being on the common line of said Tract 3 and said Lone Star High School;

THENCE North 00°13'48" West, along west line of said Tract 3, the east line of said Lone Star High School and the east line of a called 219.034 acre tract described in a deed to the City of Frisco, as recorded in Volume 4205, Page 111 of the Deed Records of said county, a distance of 2,428.40 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

THENCE leaving the west line of said Tract 3 and the east line of said 219.034 acre tract and crossing said Tract 3, the following courses and distances:

South 89°52'38" East, a distance of 174.39 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a tangent curve to the left having a central angle of 18°41'06", a radius of 2045.00 feet, a chord bearing and distance of North 80°46'48" East, 663.96 feet;

In a northeasterly direction, with said curve to the left, an arc distance of 666.91 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

North 71°26'15" East, a distance of 66.38 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 18°33'45" East, a distance of 90.51 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 69°33'15" East, a distance of 87.24 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 57°32'28" East, a distance of 115.94 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 52°30'02" East, a distance of 143.91 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 50°33'28" East, a distance of 85.28 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 43°30'34" East, a distance of 65.38 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 22°48'16" East, a distance of 159.16 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 16°32'26" East, a distance of 75.33 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 33°27'53" East, a distance of 105.37 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 53°04'35" East, a distance of 321.74 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 55°44'13" East, a distance of 50.05 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 54°00'37" East, a distance of 136.15 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 64°36'25" East, a distance of 68.14 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 64°56'02" East, a distance of 50.00 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 64°57'40" East, a distance of 153.47 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 54°23'54" East, a distance of 84.46 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 46°41'40" East, a distance of 84.46 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 40°11'55" East, a distance of 81.29 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 37°01'42" East, a distance of 70.00 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 31°26'25" East, a distance of 50.24 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 37°01'42" East, a distance of 71.66 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 35°22'39" East, a distance of 72.74 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 33°53'11" East, a distance of 72.74 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 32°23'44" East, a distance of 72.74 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 39°04'26" East, a distance of 73.62 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 47°31'41" East, a distance of 77.14 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 56°01'43" East, a distance of 87.09 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 62°04'38" West, a distance of 202.17 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a non-tangent curve to the right having a central angle of 15°24'42", a radius of 1,020.00 feet, and a chord bearing and distance of South 17°05'39" East, 273.54 feet;

In a southeasterly direction, with said curve to the right, an arc distance of 274.36 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the end of said curve;

South 09°23'18" East, a distance of 404.90 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 54°50'42" East, a distance of 14.03 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a non-tangent curve to the right having a central angle of 44°57'27", a radius of 280.00 feet, and a chord bearing and distance of South 76°48'11" East, 214.11 feet;

In a southeasterly direction, with said curve to the right, an arc distance of 219.70 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the end of said curve;

North 87°33'23" East, a distance of 15.51 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set;

North 48°24'50" East, a distance of 26.88 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set;

South 41°35'10" East, a distance of 80.00 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set;

South 48°24'50" West, a distance of 20.00 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set;

South 00°54'43" West, a distance of 13.51 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set;

South 46°35'23" East, a distance of 12.53 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set;

South 43°22'05" West, a distance of 57.00 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

North 46°35'23" West, a distance of 10.50 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set;

North 89°28'39" West, a distance of 14.65 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a non-tangent curve to the left having a central angle of 37°33'49", a radius of 632.73 feet, and a chord bearing and distance of South 28°22'37" West, 407.43 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 414.82 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a non-tangent curve to the left having a central angle of 17°51'51", a radius of 150.00 feet, and a chord bearing and distance of South 00°38'26" West, 46.58 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 46.77 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a reverse curve to the right having a central angle of 08°17'29", a radius of 500.00 feet, and a chord bearing and distance of South 4°08'45" East, 72.29 feet;

In a southeasterly direction, with said curve to the right, an arc distance of 72.36 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the end of said curve;

South 00°01'31" East, a distance of 81.46 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

South 45°01'37" East, a distance of 56.57 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set for corner;

North 89°58'17" East, a distance of 95.50 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a tangent curve to the right having a central angle of 10°34'30", a radius of 290.00 feet, and a chord bearing and distance of South 84°44'28" East, 53.45 feet;

In a southeasterly direction, with said curve to the right, an arc distance of 53.52 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set at the beginning of a reverse curve to the left having a central angle of 10°34'18", a radius of 270.00 feet, and a chord bearing and distance of South 84°44'22" East, 49.75 feet;

In a southeasterly direction, with said curve to the left, an arc distance of 49.82 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", set on the south line of said Tract 3 and the north right-of-way line of the aforementioned Panther Creek Parkway;

THENCE along the south line of said Tract 3 and the north right-of-way line of said Panther Creek Parkway, the following courses and distances:

South 89°58'29" West, a distance of 1,025.05 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", found at the beginning of a tangent curve to the left having a central angle of 1°08'54", a radius of 10,060.00 feet, and a chord bearing and distance of South 89°24'02" West, 201.62 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 201.62 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", found at the end of said curve;

South 88°49'35" West, a distance of 1,329.26 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", found at the beginning of a tangent curve to the right having a central angle of 00°23'57", a radius of 9,940.00 feet, and a chord bearing and distance of South 89°01'34" West, 69.27 feet;

In a southwesterly direction, with said curve to the right, an arc distance of 69.27 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", found at the end of said curve;

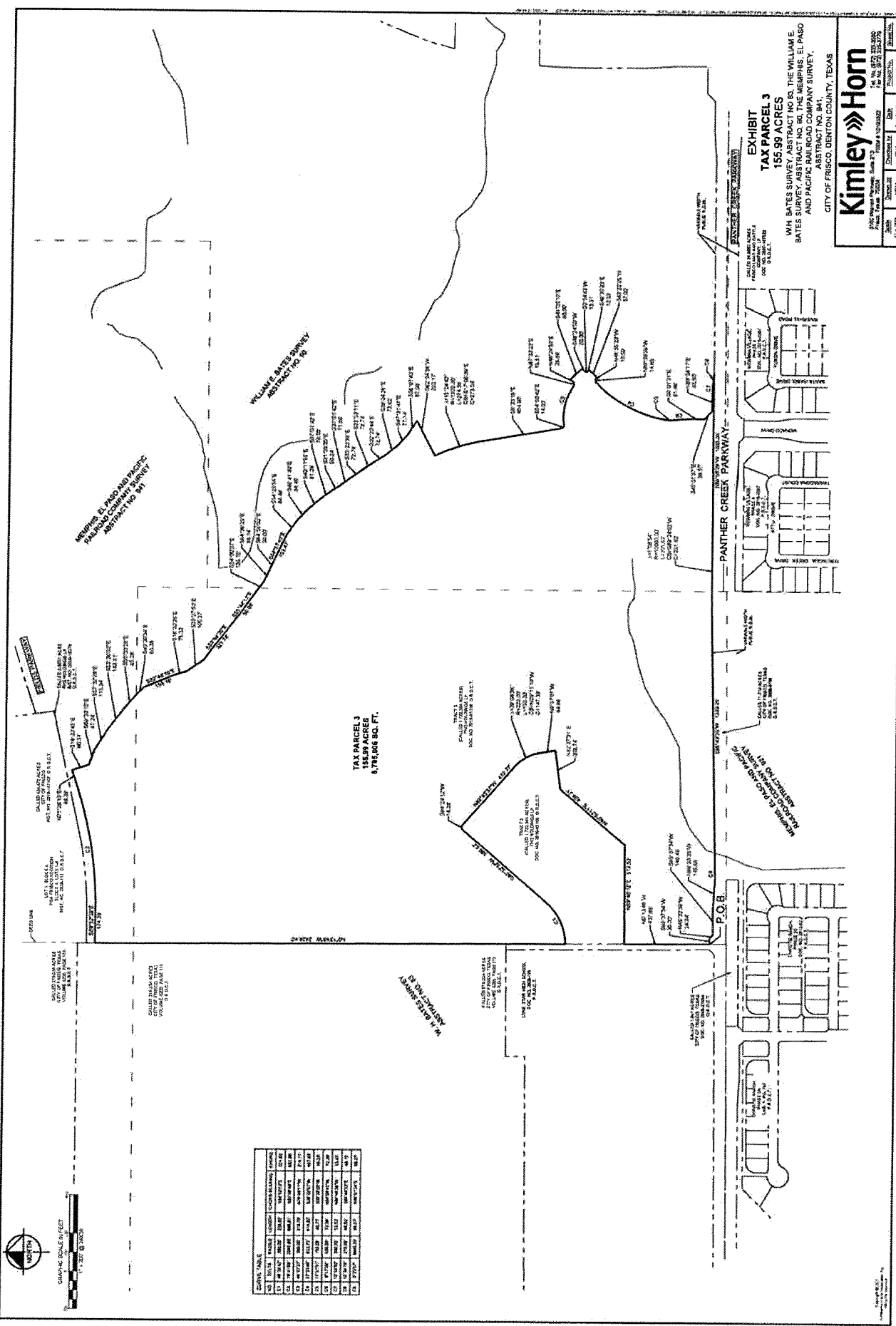
North 86°33'35" West, a distance of 146.68 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", found for corner;

South 89°37'34" West, a distance of 140.49 feet to a 5/8 inch iron rod with a red plastic cap, stamped "KHA", found for corner;

North 45°22'39" West, a distance of 24.04 feet to a 1/2 inch iron rod found for corner;

South 89°37'34" West, a distance of 30.00 feet to the **POINT OF BEGINNING** and containing 155.992 acres or 6,795,006 square feet of land, more or less.

As such real property and improvements are more generally shown as "Tax Parcel 3" on that "EXHIBIT - TAX PARCEL 3" dated April 13, 2021 attached hereto. Except as specifically identified above, inclusion of the EXHIBIT - TAX PARCEL 3 in this Exhibit "A" is not intended to create an encumbrance on title to the property described therein.



LINE	BEARING	DISTANCE	CORRECTION	BEARING	DISTANCE
1	N 89° 15' 00" E	100.00	0.00	N 89° 15' 00" E	100.00
2	S 89° 15' 00" W	100.00	0.00	S 89° 15' 00" W	100.00
3	N 00° 00' 00" E	100.00	0.00	N 00° 00' 00" E	100.00
4	S 00° 00' 00" W	100.00	0.00	S 00° 00' 00" W	100.00
5	N 89° 15' 00" E	100.00	0.00	N 89° 15' 00" E	100.00
6	S 89° 15' 00" W	100.00	0.00	S 89° 15' 00" W	100.00
7	N 00° 00' 00" E	100.00	0.00	N 00° 00' 00" E	100.00
8	S 00° 00' 00" W	100.00	0.00	S 00° 00' 00" W	100.00
9	N 89° 15' 00" E	100.00	0.00	N 89° 15' 00" E	100.00
10	S 89° 15' 00" W	100.00	0.00	S 89° 15' 00" W	100.00
11	N 00° 00' 00" E	100.00	0.00	N 00° 00' 00" E	100.00
12	S 00° 00' 00" W	100.00	0.00	S 00° 00' 00" W	100.00
13	N 89° 15' 00" E	100.00	0.00	N 89° 15' 00" E	100.00
14	S 89° 15' 00" W	100.00	0.00	S 89° 15' 00" W	100.00
15	N 00° 00' 00" E	100.00	0.00	N 00° 00' 00" E	100.00
16	S 00° 00' 00" W	100.00	0.00	S 00° 00' 00" W	100.00
17	N 89° 15' 00" E	100.00	0.00	N 89° 15' 00" E	100.00
18	S 89° 15' 00" W	100.00	0.00	S 89° 15' 00" W	100.00
19	N 00° 00' 00" E	100.00	0.00	N 00° 00' 00" E	100.00
20	S 00° 00' 00" W	100.00	0.00	S 00° 00' 00" W	100.00
21	N 89° 15' 00" E	100.00	0.00	N 89° 15' 00" E	100.00
22	S 89° 15' 00" W	100.00	0.00	S 89° 15' 00" W	100.00
23	N 00° 00' 00" E	100.00	0.00	N 00° 00' 00" E	100.00
24	S 00° 00' 00" W	100.00	0.00	S 00° 00' 00" W	100.00

EXHIBIT
TAX PARCEL 3
155.99 ACRES

W.H. BATES SURVEY, ABSTRACT NO. 83, THE WILLIAMS BATES SURVEY, ABSTRACT NO. 80, THE MEMPHIS, EL PASO AND PACIFIC COMPANY SURVEY, ABSTRACT NO. 81, CITY OF FRISCO, DENTON COUNTY, TEXAS

Kimley»Horn

2700 West Loop West, Suite 270
 Dallas, Texas 75201
 Tel. No. 972-332-9900
 Fax No. 972-332-9775

PROJECT NO. 04-12221
 SHEET NO. 04-12221-01

EXHIBIT "B"

Land Subject to Annexation

Any and all real property lying and being within a 10-mile radius of any boundary of that property described on Exhibit "A."

Note to clerk and title examiners:

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

EXHIBIT "C"

Initial Rules

The following initial Rules shall be subject to amendment or modification in accordance with Section 7.2 of the Amended and Restated Community Charter for Brookside at Fields Residential Properties.

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

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

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

(b) parking of any boat trailer, recreational vehicle, camping unit, bus, commercial use truck, flat-bed trailers or self-propelled or towable equipment or machinery of any sort, or any inoperable vehicles, on any public or private street within the Community or on any Unit unless in an enclosed structure or behind a solid fence approved pursuant to Article 5 so as not to be visible from the street, and parking of any other vehicle on a Unit in places other than the garage or driveway serving the Unit, except that (i) service and delivery vehicles and, during the construction of Improvements on a Unit, necessary construction vehicles, may be parked in the driveway of the Unit or on adjacent streets during daylight hours for any period of time reasonably necessary to provide service or to make a delivery to the Unit or the Common Area; and (ii) the Founder and authorized Builders may park and use construction vehicles, trailers, and other equipment on a Unit or Common Area in connection with their construction, development, marketing, and sale of property in the Community.

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

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

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

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

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

- (h) any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;
- (i) any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;
- (j) pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;
- (k) any noxious or offensive activity that in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;
- (l) outside burning of trash, leaves, garbage, debris, or other materials, except such debris as may be permitted to be burned during the normal course of constructing a dwelling on a Unit;
- (m) use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;
- (n) use and discharge of firecrackers and other fireworks;
- (o) accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers (this provision shall not restrict composting of grass clippings, leaves, brush, or other vegetation in a manner approved pursuant to Article 5 of the Charter);
- (p) discharge of firearms other than as permitted by law; provided, the Board shall have no obligation to take action to prevent or stop such discharge;
- (q) on-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;
- (r) hunting of birds, reptiles, or mammals, and fishing in lakes or ponds on Common Area;
- (s) any activities that materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Community or that use excessive amounts of water or which result in unreasonable levels of sound or light pollution;
- (t) conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article 5;
- (u) outdoor storage of any kind, except in areas, if any, approved pursuant to Article 5 and screened in an approved manner from view of neighboring property and streets;
- (v) outdoor airing or drying of clothes, rugs, bedding, or similar items unless screened from view of other properties in the Community by a screening method approved pursuant to Article 5;
- (w) excavation of sand, gravel, or soil, except in connection with a grading and/or building plan approved pursuant to Article 5;

(x) garage sales or estate sales or other sales of personal or business property, except that the occupants of Unit may register with the Association and obtain a permit to conduct one garage or estate sale on the Unit each calendar year, not to exceed 3 days in duration. No signs, balloons, banners, or other items shall be placed in the Community or on adjacent rights-of-way advertising such sale, except that one sign, not to exceed four square feet per side or five feet in height, may be posted on the Unit on which the sale is being conducted to identify the location and hours of the sale;

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

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

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

(collectively, "**Permitted Antennas**") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Founder and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus; and

(z) operation of a golf cart on public or private streets within the Community, except as the Association may specifically authorize and then subject to such additional rules as the Board may adopt, which may include, without limitation, specific requirements as to registration, licensing, and size, type, color, and equipping of any golf carts operated within the Community and requirements as to the minimum age of operators. Except as may be authorized pursuant to the preceding, the operation of a golf cart shall not be permitted on any sidewalk or Common Area and shall only be operated in accordance with the rules and regulations promulgated by the City of Frisco, Texas.

3. **Prohibited Conditions.** The following shall be prohibited in the Community:

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

(b) Structures, equipment, or other items on the exterior portions of a Unit that have become rusty, dilapidated, or otherwise fallen into disrepair.

EXHIBIT "D"

Certificate of Formation of Fields Residential Association, Inc.

CERTIFICATE OF FORMATION
OF
FIELDS RESIDENTIAL ASSOCIATION, INC.

I, the undersigned, being of the age of eighteen years or more, acting as incorporator of a corporation under the Texas Nonprofit Corporation Law, do hereby adopt the following Certificate of Formation for such corporation.

Article 1. Name. The name of the corporation is Fields Residential Association, Inc. (the "**Residential Association**").

Article 2. Principal Office. The initial principal office of the Residential Association is located at 1900 N. Akard St., Dallas, Texas 75201.

Article 3. Duration. The Residential Association shall have perpetual duration.

Article 4. Applicable Statute. The corporation is organized pursuant to the provisions of the Texas Nonprofit Corporation Law, as set forth in Chapters 20 and 22, and the provisions of Title 1 applicable to nonprofit corporations, of the Texas Business Organizations Code, as it may be amended (the "**Act**").

Article 5. Defined Terms. Capitalized terms used in this Certificate of Formation and not otherwise defined in this Certificate shall have the meanings set forth in the Community Charter for Fields Residential Properties, recorded or to be recorded by FHQ HOLDINGS LP, a Delaware limited partnership (the "**Founder**"), in the Office of the County Clerk of Collin and Denton Counties, Texas, as it may be amended (the "**Charter**").

Article 6. Purposes and Powers. The Residential Association does not contemplate pecuniary gain or profit, direct or indirect, to its members.

(a) By way of explanation and not limitation, the purposes for which the Residential Association is formed are:

(i) to be and constitute the Residential Association to which reference is made in the Charter, to perform all obligations and duties of the Residential Association, and to exercise all rights and powers of the Residential Association, as specified therein, in the By-Laws of the Residential Association ("**By-Laws**") and as provided by law; and

(ii) to provide an entity for the furtherance of the interests of the owners of that real property that is subject to the terms of the Charter (the "**Residential Community**").

(b) In furtherance of its purposes, the Residential Association shall have the following powers, which, unless indicated otherwise by the Charter or By-Laws, may be exercised by its board of directors:

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

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

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

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

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

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

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

(6) to borrow money for any purpose;

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

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

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

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

(c) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 6 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article 6. None of the objects or purposes set out above shall be construed to authorize the Residential Association to do any act in violation of the Act, and all such objects or purposes are subject to the Act.

Article 7. Membership. The Residential Association shall be a membership corporation without certificates or shares of stock. The Founder, for such period as is specified in the Charter, and each Person who is the Owner of a Unit within the Residential Community, shall be a member of the Residential Association and shall be entitled to such voting rights and membership privileges as are set forth in the Charter and the By-Laws.

Article 8. Board of Directors. The business and affairs of the Residential Association shall be conducted, managed, and controlled by a Board of Directors. The Board may delegate its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

The Board of Directors shall consist of not less than three nor more than seven directors, as determined in accordance with the By-Laws. The initial Board of Directors shall consist of three directors. The names and addresses of the members of the initial Board of Directors, who shall hold office until their successors are elected and have qualified, or until their resignation or removal, are as follows:

Fehmi Karahan	1900 N. Akard St., Dallas, Texas 75201
Todd Watson	1900 N. Akard St., Dallas, Texas 75201
Diane Hornquist	1900 N. Akard St., Dallas, Texas 75201

The number, the method of selection, removal, and filling of vacancies on the Board of Directors, and the term of office of members of the Board of Directors, shall be as set forth in the By-Laws.

Article 9. Indemnification of Directors. The Residential Association shall indemnify its officers, directors and committee members as and to the extent required by the By-Laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Residential Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

Article 10. Action by Less Than Unanimous Consent. The Residential Association and the Board of Directors shall be authorized to take action without holding a meeting or

providing notice by less than unanimous consent of the Voting Delegates or directors, as applicable, in accordance with the provisions of the By-Laws, except where a meeting is required by Texas law.

Article 11. Dissolution. The Residential Association may be dissolved only upon a resolution duly adopted by its Board of Directors and approved by the affirmative vote of Voting Delegates representing not less than 67% of the Units subject to the Charter. In addition, so long as the Founder owns any property subject to the Charter or which the Founder may unilaterally make subject to the Charter pursuant to the provisions of the Charter, the written consent of the Founder shall be required. The Residential Association is authorized, upon its winding up, to distribute its assets in a manner other than as provided by Section 22.304 of the Texas Business Organizations Code, in accordance with a plan of distribution adopted pursuant to Chapter 22 of the Texas Business Organizations Code, which plan may, but shall not be required to, provide for distribution of the remaining property of the Residential Association for tax-exempt purposes to an organization exempt under Section 501(c)(3) of the Internal Revenue Code, or described by Section 170(c)(1) or (2) of the Internal Revenue Code.

Article 12. Merger and Consolidation. The Residential Association may merge or consolidate only upon a resolution duly adopted by its Board of Directors and the affirmative vote of Voting Delegates representing not less than 67% of the Units subject to the Charter. In addition, so long as the Founder owns any property subject to the Charter or which it may unilaterally make subject to the Charter, the written consent of the Founder shall be required.

Article 13. Amendments. This Certificate of Formation may be amended only upon a resolution duly adopted by the Board of Directors and approved by the affirmative vote of Voting Delegates representing at least 67% of the total votes of the membership; provided, the Voting Delegates shall not be entitled to vote on any amendment to this Certificate of Formation adopted for the sole purpose of complying with the requirements of any governmental or quasi-governmental entity or institutional lender authorized to fund, insure or guarantee mortgages on individual Units, which amendments may be adopted by the Board of Directors. In addition, so long as the Founder owns any property subject to the Charter or which it may unilaterally make subject to the Charter, the consent of the Founder shall be required for any amendment.

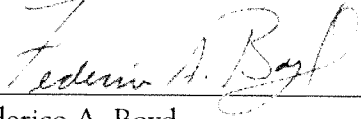
Article 14. Registered Agent and Office. The business address of the initial registered agent and registered office of the Residential Association is 1900 N. Akard St., Dallas, Dallas County, Texas 75201. The initial registered agent at such address is Diane Hornquist.

Article 15. Effective Date. This Certificate of Formation shall become effective when filed by the Secretary of State for the State of Texas.

Article 16. Organizer. The name and address of the organizer is Federico A. Boyd, Hyatt & Stubblefield, P.C., 1979 Lakeside Parkway, Suite 250, Atlanta, Georgia 30084.

IN WITNESS WHEREOF, the undersigned affirms that the person designated as registered agent herein 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 this filing instrument.

Date: March 2, 2021



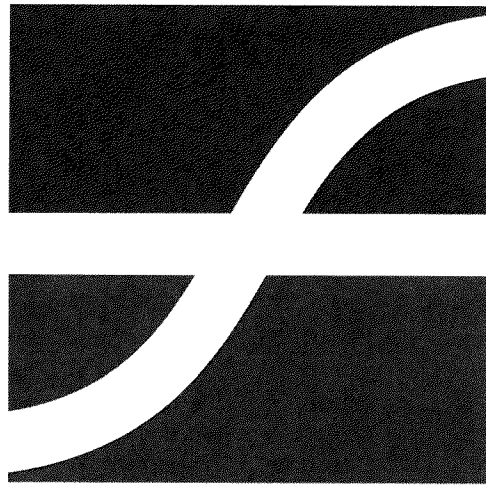
Federico A. Boyd

616201/Residential Docs/Cert of Form-Fields Resid - 030221 - fab

EXHIBIT "E"

By-Laws of Fields Residential Association, Inc.

AMENDED AND RESTATED BY-LAWS
OF
FIELDS RESIDENTIAL ASSOCIATION, INC.



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**AMENDED AND RESTATED BY-LAWS
OF
FIELDS RESIDENTIAL ASSOCIATION, INC.**

**Article 1
Name, Principal Office, and Definitions**

1.1. Name.

The name of the corporation is Fields Residential Association, Inc. (the "**Association**").

1.2. Principal Office.

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

1.3. Definitions.

The words used in these Amended and Restated By-Laws of Fields Residential Association, Inc. ("By-Laws"), shall be given their normal, commonly understood definitions. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Community Charter for Brookside at Fields Residential Properties recorded by FHQ HOLDINGS LP, a Delaware limited partnership (the "**Founder**") in the Office of the County Clerk of Denton County, Texas, as it may be amended (the "**Charter**"). The term "**majority**," as used in these By-Laws, means those votes, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**Article 2
Membership: Meetings, Quorum, Voting, Proxies**

2.1. Membership.

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

2.2. Place of Meetings.

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

2.3. Membership Meetings.

(a) *General.* Association meetings shall be of the Voting Delegates unless the Board otherwise specifies or Texas law otherwise requires; however, any Member may attend a Association meeting. The first Association meeting, whether an annual or special meeting, shall be held within one year after the Association's incorporation.

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

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

2.4. Notice of Meetings.

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

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

2.5. Electronic Participation in Meetings.

The Association may hold Association meetings and/or allow Voting Delegates or Members to participate in any Association meeting by conference telephone or similar communications equipment or another suitable electronic communications system, including videoconferencing technology or the Internet,

if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, the Association must implement measures to verify that every Voting Delegate voting at the meeting by means of remote communication is sufficiently identified.

2.6. Waiver of Notice.

Waiver of notice of a Association meeting shall be deemed the equivalent of proper notice. Any Voting Delegate or alternate may waive, in writing, notice of any Association meeting, either before or after such meeting. A Voting Delegate or alternate's attendance at a meeting shall be deemed a waiver by such Voting Delegate and alternate of notice of the time, date, and place thereof, unless the Voting Delegate or alternate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

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

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

2.8. Voting.

(a) ***Voting Rights.*** Members shall have such voting rights as are set forth in the Charter, which provisions are specifically incorporated by this reference. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue as to which the Voting Delegate representing their Unit would be entitled to vote under the Governing Documents.

(b) ***Voting Procedures.*** Not later than the tenth (10th) day or earlier than the sixtieth (60th) day before the date of any election or vote, the Association shall give written notice of the election or vote to:

(i) each Owner, in the case of any election or vote on which all Owners or Voting Delegates are entitled to vote; or

(ii) each Owner of a Unit within a Neighborhood, for purposes of electing of a Voting Delegate or alternative Voting Delegate to represent that Neighborhood.

A membership vote on any matter shall be conducted by written ballot signed by the Member or Voting Delegate entitled to vote, which ballot may be cast in person at a meeting, by mail or electronic transmission (including facsimile transmission, electronic mail, or posting on an Internet website), or by any combination of those methods; provided, any ballot submitted by electronically must be submitted in a manner that permits confirmation of the identity of the Member casting the vote and allows the Member to receive a receipt evidencing the transmission and receipt of the ballot. A ballot cast at a meeting shall revoke and supersede any ballot casting the same vote submitted by other means. A ballot cast prior to a meeting may not be counted if the motion was amended at the meeting so as to deviate from the exact language on the ballot previously cast.

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

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

(ii) include the following language or such other language as may be authorized in lieu of the following language by future amendment of Texas Property Code Chapter 209, as it may be amended or any successor Texas statute thereof:

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

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

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

Not later than the 15th day after the later of the date of any meeting of Owners at which the election or vote was held or the date of the announcement of the results of the election or vote, any Owner may demand a recount of the votes in accordance with Texas Property Code Section 209.0057, as it may be amended or any successor Texas statute thereof.

(c) *Election of Voting Delegates.* The Owner Members, other than the Founder, owning Units within each Neighborhood shall elect a Voting Delegate to cast all votes attributable to their Units on all Association matters requiring a membership vote, except as otherwise specified in the Charter or these By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate. The Founder shall be the Voting Delegate for all Units that the Founder owns.

If Neighborhoods have been established, the Board shall call for the first election of a Voting Delegate and alternate Voting Delegate from each Neighborhood then existing not later than the time that Owners other than the Founder or Builders own 1,500 Units within the Community and for each Neighborhood thereafter established not later than the first annual meeting after 51% of the Units in such Neighborhood are owned by Persons other than Builders. The first Voting Delegates elected shall serve until the close of the annual meeting following the first anniversary of their election. Thereafter, the Board shall call for an election of Voting Delegates and alternates on an annual basis to coincide with the annual meeting, with Voting Delegate's terms to commence upon the close of such annual meeting and expire upon the close of the next annual meeting following their election.

Voting Delegate elections shall be conducted by ballots cast by mail, computer, or at a meeting of the Owner Members within such Neighborhood, as the Board determines. Upon written petition signed by Owner Members holding at least 20% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. Candidates for election as Voting Delegates may be nominated by the Board, a nominating committee the Board may appoint, or from the floor at any meeting at which such election is to be held. In addition or in the alternative, any person may submit his or her name for consideration.

The presence, in person or by proxy, or the filing of ballots of Owner Members representing at least 20% of the total votes attributable to Units in the Neighborhood shall constitute a quorum for any Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Neighborhood, the Board may appoint a Voting Delegate or alternate Voting Delegate to represent such Neighborhood until a successor is elected.

Subject to the above quorum requirement, in any election of Voting Delegates the candidate who receives the greatest number of votes shall be elected as the Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. In the event of a tie vote among the leading candidates, the Voting Delegate shall be determined by drawing names from a hat, with the first person drawn being the Voting Delegate and the second being the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one year or until their successors are elected, whichever is longer.

(d) ***Removal of Voting Delegates.*** Any Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owner Members representing a majority of the total number of Units in the Neighborhood that the Voting Delegate represents.

2.9. Proxies.

Voting Delegates may not vote by proxy but only in person or through their designated alternates; however, any Voting Delegate who is entitled to cast only the vote(s) for his own Unit(s) pursuant to the Charter, these By-Laws, or Texas law may cast such vote(s) in person or by proxy. Likewise, if a Member is entitled personally to cast the vote for his or her Unit on any matter, he or she may vote in person or by proxy, subject to the limitations of Texas law and subject to any specific provision to the contrary in the Charter or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, shall be signed by the Member or the Member's duly authorized attorney-in-fact, and shall be dated and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same

voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

A proxy is effective only for the specific meeting for which it was originally given, as such meeting lawfully may be adjourned and reconvened, and automatically expires 90 days after the date of the meeting for which it was originally given. Every proxy shall be revocable and shall automatically cease (a) if the Member attends the meeting and votes in person, (b) upon conveyance of any Unit for which it was given, or (c) upon the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person.

2.10. Quorum.

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

(b) After the election of Voting Delegates, except as these By-Laws or the Charter otherwise provide(s), the presence of Voting Delegates or their alternates representing at least a majority of the total number of Voting Delegates and a majority of the total votes in the Association shall constitute a quorum at all membership meetings, and the casting of ballots representing a majority of the total votes in the Association shall constitute a quorum for any membership vote by Voting Delegates conducted by means other than at a meeting.

2.11. Conduct of Meetings.

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

2.12. Action Without a Meeting.

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

- (a) the Association mails or delivers to every Person entitled to vote on the action:
 - (i) an Absentee Ballot meeting the requirements of Section 2.8(b), or
 - (ii) notice of the posting of such a ballot on an Internet website, with instructions for obtaining access to such website and casting the ballot; and

(b) the number of votes cast equals or exceeds the quorum required for a meeting to consider such action; and

(c) the number of votes cast in favor of the proposed action equals or exceeds the number of votes required to approve such action if the vote were conducted at a meeting.

Voting instructions or solicitations for any vote conducted in a manner other than at a meeting must indicate the deadline for casting the ballot in order to be counted. The period for submitting ballots to the Association shall not be more than 60 days. Each ballot cast must be signed and dated by the Voting Delegate or Member, as applicable. A signed ballot may not be revoked once submitted to the Association, except as provided in Section 2.8(a). The Board shall notify the Members of the results of the vote within 30 days after the expiration of the voting period.

Article 3

Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. **Governing Body; Qualifications.**

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Founder Member, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time other than directors appointed by the Founder Member. A "**resident**" shall be any natural person 21 years of age or older whose principal residence is a Unit within Brookside at Fields.

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

No individual who has been convicted of a felony or crime involving moral turpitude not more than 20 years before seeking election to the Board, as evidenced by written, documented evidence from a database or other record maintained by a governmental law enforcement authority, shall be eligible to serve on the Board. If such evidence is discovered while such individual is already serving on the Board, that individual is immediately ineligible to serve and shall automatically be removed from the Board.

3.2. **Number of Directors.**

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

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

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

(b) *Directors During Founder Control Period.* Except as otherwise provided in this subsection (b) and in Section 3.5, the Founder Member may appoint, remove, and replace Board members until termination of the Founder Control Period. During such period, the Voting Delegates other than the

Founder shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Voting Delegates are referred to as "**Owner Directors**"):

(i) Within 60 days after the time that Owners other than the Founder, Founder Affiliates, or Builders own 30% of the Maximum Number of Units or whenever the Founder earlier determines, the President shall call for an election by which the Voting Delegates other than the Founder shall be entitled to elect one of the three directors. The remaining directors shall be appointees of the Founder. The Owner Director shall be elected for a term of two years or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such Owner Director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) Within 60 days after the time that Owners other than the Founder, Founder Affiliates, or Builders own 60% of the Maximum Number of Units permitted by the Charter or whenever the Founder earlier determines, the Board shall be increased to five directors and the President shall call for an election by which the Voting Delegates other than the Founder shall be entitled to elect two of the five directors, who shall be elected at large. The Founder shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such Owner Directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) *Directors After the Founder Control Period* Not later than termination of the Founder Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the Voting Delegates shall be entitled to elect five of the seven directors. Three Owner Directors shall be elected to serve until the second annual meeting following their election and two Owner Directors shall be elected to serve until the third annual meeting following their election, as such Owner Directors determine among themselves. The Founder shall be entitled to continue to appoint one director to serve until the second annual meeting following such election and one director to serve until the third annual meeting following such election.

Thereafter, upon expiration of the term of office of each director, the Voting Delegates (including the Founder in its capacity as the Voting Delegate for Units which it owns) shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve no more than three consecutive terms.

The diagram below illustrates the concept of transition of control of the Board during and after the Founder Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS					
Initial Board	30% of Maximum Number of Units	60% of Maximum Number of Units	Termination of Founder Control Period	2 nd Annual Meeting After Election in 3.3(c)	3 rd Annual Meeting After Election in 3.3(c)
Founder	Owner	Owner	Owner	Owner	Owner
Founder	Founder	Owner	Owner	Owner	Owner
Founder	Founder	Founder	Owner	Owner	Owner
		Founder	Owner	Owner	Owner
		Founder	Owner	Owner	Owner
			Founder	Owner	Owner
			Founder	Founder	Owner

3.4. Nomination and Election Procedures.

(a) **Nomination of Candidates.** At least 45 days prior to any election of directors by the Voting Delegates, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners. The Nominating Committee shall serve until the close of the election for which they were appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Voting Delegates at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at the meeting at which any election is held or, if the election is to be held without a meeting pursuant to Section 2.12, the Board shall establish a reasonable procedure by which any Owner may declare his or her candidacy for election to the Board prior to the solicitation of ballots under that section. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Delegates and to solicit votes.

(b) **Solicitation of Candidates.** Prior to disseminating ballots for the election of Owner Directors, the Board shall provide notice to all Owners soliciting candidates interested in running for a director position as required by and in accordance with Texas Property Code Section 209.00593, as it may be amended or any successor Texas statute thereof.

(c) **Election Procedures.** At each election, voting shall be by ballot, which may be cast in any manner authorized by the Board consistent with Section 2.8. Each Voting Delegate entitled to vote in such election under Section 3.3 may cast all votes assigned to the Units it represents for each position to be filled by such election. Notwithstanding this, if the number of candidates equals the number of positions to be filled and there are no nominations from the floor, any Voting Delegate may move to accept the slate of candidates nominated by the Nominating Committee, and, if approved, no balloting shall be required. Under no circumstances shall cumulative voting be permitted in any election of directors.

In the event of a tie vote, the Voting Delegates shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is

taken. If the second vote again results in a tie, then the Board shall call for election of the director(s) by the Members. Such election shall be held by mail, with ballots to be sent by first class mail to each Member entitled to vote within 10 days after the meeting at which the original election was held.

3.5. Removal of Directors and Vacancies.

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

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who has three consecutive unexcused absences from Board meetings. The Board may appoint a successor to fill the vacancy for the remainder of the term.

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

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

B. Meetings.

3.6. Organizational Meetings.

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

3.7. Regular Meetings.

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

3.8. Special Meetings.

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

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting. Notice of any meeting which is conducted or which may be attended by conference telephone or other remote communications system in accordance with Section 3.10 shall specify the form of communications system to be used for the meeting and the means of accessing the communications system. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication,

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

(b) Notice of all Board meetings, setting forth the date, hour, place, and general subject of the meeting, including a general description of any matter to be brought up for deliberation in executive session, shall be given as follows:

(i) by mail to each Owner, not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(ii) least 144 hours before the start of a regular board meeting and at least 72 hours before the start of a special board meeting, sending the notice by e-mail to each Owner who has registered an e-mail address with the Association and either:

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

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

(c) If the Board recesses a Board meeting until the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent the requirements of this Article III, Part B. If a Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner prescribed by subsection (b)(ii)(A) or (B) within two hours after adjournment of the meeting being continued.

(d) Except as otherwise specifically provided in subsection (e), the Board may meet by any means of communication, including electronic and telephonic communication pursuant to Section 3.10(b) without prior notice to the Owners, or the Board may take action by unanimous written consent pursuant to Section 3.14, without prior notice to the Owners, to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate Board action. Any action taken without notice to Owners under subsection (b) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next Board meeting.

(e) The Board may not, without prior notice to the Owners under subsection (b), consider or vote on fines, damage assessments, initiation of foreclosure actions, initiation of enforcement actions (other than temporary restraining orders or violations involving a threat to health or safety), increases in assessments; levying of special assessments, appeals from a denial of architectural control approval; lending or borrowing money; the adoption or amendment of a dedicatory instrument; the approval of an annual

budget or the approval of an amendment to the annual budget by more than 10 percent; the sale or purchase of real property; the filling of a vacancy of the Board; the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or the election of an officer. In addition, the Board may not consider or vote on suspension of a right of a particular Owner before the Owner has an opportunity to attend a Board meeting to present the Owner's position, including any defense, on the issue.

(f) Subsections (b) through (e) of this section shall not apply to a Board meeting during the Development and Sale Period unless the meeting is conducted for the purpose of:

- (i) adopting or amending the Governing Documents;
- (ii) increasing the amount of the Base Assessment or adopting or increasing a Special Assessment;
- (iii) electing non-developer directors or establishing or modifying the process for their election; or
- (iv) changing the voting rights of Members.

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

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

3.10. Place of Meetings; Telephonic Participation in Meetings; Remote Meetings.

(a) Except as otherwise authorized in this Section 3.10, all Board meetings shall be held within Denton County, Texas or an adjacent county.

(b) Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

(c) A meeting of the Board, or of any committee designated by the Board, may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, but only if: (i) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and (ii) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant.

3.11. Quorum of Board; Voting.

(a) At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Texas law, these By-Laws, or the Charter specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting without further notice other than an announcement at the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

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

3.12. Conduct of Meetings.

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

3.13. Open Meetings; Executive Session.

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

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

3.14. Action Without a Formal Meeting.

Subject to Section 3.9, any action to be taken or which may be taken at a Board meeting may be taken without a meeting if a written consent or consents setting forth the action so taken is signed by all of the directors, dated, and filed with the minutes of Board meetings. Such consent shall have the same force and effect as a unanimous vote at a meeting.

C. Powers and Duties.

3.15. Powers.

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

3.16. Duties.

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Charter, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and, where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) opening bank accounts on the Association's behalf and designating the signatories required;
- (f) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents; provided, if the Association proposes to contract for services that will cost more than \$50,000.00, it shall solicit bids or proposals for such services using a bid process established by the Board as required by Texas Property Code Section 209.0052(c);
- (h) determining when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter and Section 3.18 below;
- (i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (j) paying the cost of all services rendered to the Association;

- (k) keeping a detailed accounting of the Association's receipts and expenditures;
- (l) making available upon request to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 10.4; and
- (m) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Texas law, the Certificate of Formation, or these By-Laws.

3.17. Conflicts of Interest.

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors appointed by the Founder may be employed by or otherwise transact business with the Founder or Founder Affiliates, and the Founder may transact business with the Association or its contractors.

Article 4

Transition from Founder to Owner Control

4.1. Transition Process.

Transition is a process by which control of the Board gradually shifts from the Founder to the Owners, as described in Section 3.3. The process concludes upon termination of the Founder Control Period, when the Voting Delegates will elect the entire Board. At that time, the Owners, through their newly-elected Board, will take responsibility for fulfilling the Association's responsibilities and exercising the Association's authority under the Governing Documents without the direct guidance or involvement of the Founder or Founder-appointed directors.

4.2. Education and Communication.

In anticipation of termination of the Founder Control Period, the Founder Member shall communicate with the Owners regarding the transition process, the anticipated timeline for transition, what to expect during and after the transition, and opportunities for Owner participation. Such communication shall be in writing and through one or more "town hall" meetings at which Owners have the opportunity to ask and obtain answers to questions in order to gain a better understanding of the transition process.

4.3. Transition Committee.

The Founder Member may, but shall not be required to, establish a Transition Committee comprised of five to seven members, all of whom shall be Owners, to (i) involve the Owners in facilitating a smooth transition of control of the Board from directors appointed by the Founder Member to directors

elected by the Voting Delegates, and (ii) help prepare the Board and the Owners to assume responsibility for carrying on Association operations once the Founder and its representatives are no longer directly involved.

If a Transition Committee is appointed, the Board may, as a Common Expense, retain industry professionals, including association managers, attorneys, engineers, and accountants, as it deems necessary or appropriate to assist the Board in preparing for transition and to assist the Transition Committee in conducting its review.

Article 5

Officers

5.1. Officers.

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

5.2. Election and Term of Office.

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

5.3. Removal and Vacancies.

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

5.4. Powers and Duties.

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

5.5. Resignation.

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

Article 6 Committees

6.1. General.

In addition to any Transition Committee appointed pursuant to Article 4 and such committees as the Founder or Board may appoint pursuant to the Charter, the Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Members of any committee serve at the pleasure of the Board and have no authority to take action on behalf of the Association or the Board. Committees serve to inform and make recommendations to the Board. In the conduct of its duties and responsibilities, each committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11 of these By-Laws. Except as otherwise provided by Board resolution or the Governing Documents, a committee may meet by unanimous written consent of its members in lieu of a meeting.

6.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 6.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article 9 of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

6.3. Service Area Committees.

The Owners within any Service Area which has no formal organizational structure or association may elect a Service Area Committee to determine the nature and extent of services, if any, which it desires to have the Association provide to the Service Area, over and above those services which the Association provides to all Units in the Community. A Service Area Committee, if elected, shall consist of three Owners of Units in the Service Area; however, if approved by the vote of Owners representing at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

Elections of Service Area Committees may be held by written ballot sent to all Owners of Units within the Service Area, or at a meeting of the Owners of Units within the Service Area, as the Board determines. The Board or any Owner of a Unit in the Service Area may nominate candidates for election to the Service Area Committee. That number of candidates equal to the number of positions to be filled receiving the most votes shall be elected. Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

6.4. Lifestyle Committee.

In addition to such other committees as the Board may establish pursuant to this Article 6, the Board may appoint or allow the Voting Delegates to elect a Lifestyle Committee to make recommendations to the Board regarding the use of Community Enhancement Fees collected pursuant to the Charter, consistent with the purposes for such fees set forth in the Charter. Any such committee shall be composed of that number of persons determined by Board resolution, who shall be selected and serve for such terms as set forth in the Board resolution establishing such committee.

Article 7

Standards of Conduct; Liability, and Indemnification

7.1. Standards for Directors and Officers.

Board determinations of the meaning, scope, and application of Governing Document provisions shall, in the absence of an adjudication by a court of competent jurisdiction to the contrary, be final and binding as to all persons or property benefitted or bound by the provisions of the Governing Documents. The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

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

7.2. Liability.

(a) A director or officer shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director or officer if he or she has acted in accordance with Section 7.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has

a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit or relationship to the Founder or a Founder Affiliate); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

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

7.3. Indemnification.

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

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

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

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

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

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

(iv) receipt of an improper personal benefit.

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

7.4. Advancement of Expenses.

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

7.5. Board and Officer Training.

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

The Board may also provide, or provide for, Owner and resident education designed to foster a better understanding of Brookside at Fields's governance and operations, and leadership training classes designed to educate Voting Delegates and Owners as to the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

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

Article 8 Management and Accounting

8.1. Compensation of Directors and Officers.

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

8.2. Right of Founder Member to Disapprove Actions.

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

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

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

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

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

8.3. Management Certificate and Managing Agent.

The Association shall record a management certificate as required by Texas Property Code Section 209.004 and amend the same within 30 days of any change in the information required to be set forth therein. In addition, within seven days after recording an initial or amended management certificate, the Association shall electronically file a copy of the same with the Texas Real Estate Commission.

The Board may employ for the Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Founder or Founder Affiliates as managing agent or manager.

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

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

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. The managing

agent shall promptly disclose to the Board any financial or other interest that it may have in any firm providing goods or services to the Association.

8.4. Accounts and Reports.

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

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

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

(b) Commencing at the end of the Association's first full fiscal year, the following financial reports shall be prepared for the Association at least quarterly containing:

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

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

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

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

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

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

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

8.5. Borrowing.

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

8.6. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside Brookside at Fields.

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

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

Article 9 Enforcement Procedures

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

9.1. Notice and Response.

The Board or its delegate shall serve the alleged violator and/or the Owner with written notice, by "verified mail," as such term is defined in Texas Property Code Section 209.002(13), as it may be amended or any successor Texas statute thereof,

- (a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable;
- (b) describing the proposed sanction to be imposed; and
- (c) informing the alleged violator and/or Owner that:
 - (i) he or she has 30 days after receipt of the notice to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article 6;
 - (ii) he or she may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if serving on active military duty;
 - (iii) attorneys fees and costs may be charged if the delinquency or violation continues after a certain date; and
 - (iv) if the violation is of a curable nature and does not pose a threat to public health or safety, he or she may avoid the proposed sanction by curing the violation within a reasonable cure period stated in the notice. Notwithstanding the preceding, the Association shall have no obligation to provide notice or a cure period if the alleged violator has been given notice of a similar violation within the preceding six months. If the hearing is to be held before a Covenants Committee, the notice shall also state that the alleged violator has the right to appeal the decision of the Covenants Committee to the Board. A viola-

tion shall be deemed "uncurable" in accordance with Texas Property Code Section 209.006, as it may be amended or any successor Texas statute thereof.

The alleged violator shall respond to the notice of the alleged violation in writing within such 30-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction, or the proposed sanction shall be imposed. If the alleged violator cures the alleged violation and notifies the Board in writing of such cure within such 30-day period the Board may not assess a fine for such violations and may, but shall not be obligated to, waive or suspend the imposition of others sanctions. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. If a timely request for a hearing is not made, the sanction stated in the notice may be imposed without further action. Notwithstanding any suspension of proceedings hereunder, subject to Texas law, if the same or similar violation is reported within six months after the date of the notice of the original violation, the Association may pursue any and all sanctions described in the original notice without further notice to the alleged violator.

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

9.2. Hearing.

If a hearing is requested within the allotted 30-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session within 30 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 10 days, and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing and provide the Owner with a packet containing all documents, photographs, and communications relating to the matter the Association intends to introduce at the hearing. If the Association does not provide such packet at least 10 days prior to the hearing, the Owner is entitled to an automatic 15-day postponement of the hearing. At the hearing, a member of the Board or the Association's designated representative shall first present the Association's case against the Owner. The alleged violator shall be afforded a reasonable opportunity to be heard and both the Association and the Owner shall be entitled to make an audio recording of the hearing. If the alleged violator fails to appear, a hearing may be held in his or her absence. The Board may adopt rules for the conduct of such hearings that may include, without limitation, rules that govern the presentation of evidence and witnesses and the ability of an alleged violator to question adverse witnesses. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the Board's or Committee's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three days after the hearing.

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

9.3. Appeal.

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

Article 10 Miscellaneous

10.1. Fiscal Year.

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

10.2. Parliamentary Rules.

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

10.3. Conflicts.

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

10.4. Books and Records.

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

(i) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;

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

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

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

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

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

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

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

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

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

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

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

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

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

The Board shall establish a records production and copying policy that prescribes the charges to be paid by the Owner for compilation, production, and reproduction of information requested by such Owner or its authorized representative under this section, which charges may include all reasonable costs of materials, labor, and overhead, but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3, as it may be amended or any successor Texas statute thereof ("**Authorized Charges**"). No charge shall be made pursuant to such policy until the policy has been recorded as required by Texas Property Code Section 209.005, as it may be amended or any successor Texas statute thereof and Section 202.006, as it may be amended or any successor Texas statute thereof. The Association may require ad-

vance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the Authorized Charges vary from the estimate, the Association shall submit a final invoice to the Owner on or before the 30th business day after the date the information is delivered reflecting the variance and any balance or refund due. Any balance due which is not reimbursed to the Association before the 30th business day after the date the invoice is sent to the Owner may be added to the Owner's account as an assessment. Any amount paid in excess of Authorized Charges shall be refunded to the Owner not later than the 30th business day after the date the invoice is sent to the Owner.

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

10.5. Notices.

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

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

(i) if to a Member or Voting Delegate, at the mailing address, telephone facsimile number, or e-mail address which the Member or Voting Delegate has designated by notice to the Secretary in accordance with this Section 10.5 or, if no such address or number has been designated, at the address of the Unit of such Member or Voting Delegate;

(ii) if to the Association, the Board, or a committee of either, at the mailing address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association has designated by notice to the Members in accordance with this Section 10.5; or

(iii) if to the Founder, at the Founder's principal address as it appears on the Secretary of State's records, or at such other address as the Founder has designated by notice to the Association in accordance with this Section 10.5.

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

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

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

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

10.6. Amendment.

(a) ***By Founder.*** Until termination of the Founder Control Period, the Founder may unilaterally amend these By-Laws for any purpose. Thereafter, until termination of the Development and Sale Period, the Founder may unilaterally amend this Charter at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; or (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units.

(b) ***By Owner Members Generally.*** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing at least 67% of the total votes in the Association, and the consent of the Founder Member, if such exists. Notwithstanding the above, no amendment to these By-Laws may conflict with the Charter and the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment shall be prepared and signed by the President or Vice President and by the Secretary or Treasurer of the Association certifying that the requisite approval was obtained.

(c) ***Validity and Effective Date of Amendments.*** Amendments to these By-Laws shall become effective upon recordation in the Office of the County Clerk of Denton County, Texas, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its adoption, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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

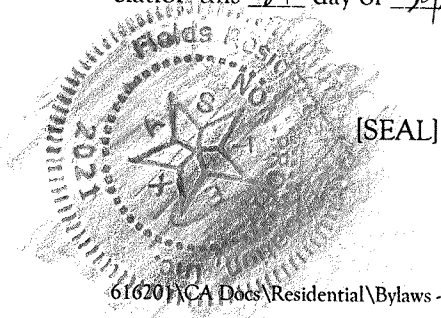
CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Fields Residential Association, Inc., a Texas nonprofit corporation;

That the foregoing By-Laws constitute the Amended and Restated By-Laws of Fields Residential Association, Inc. as duly adopted by resolution of the Board of Directors thereof on the 29th day of September, 2022.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 29th day of September, 2022.



[SEAL]


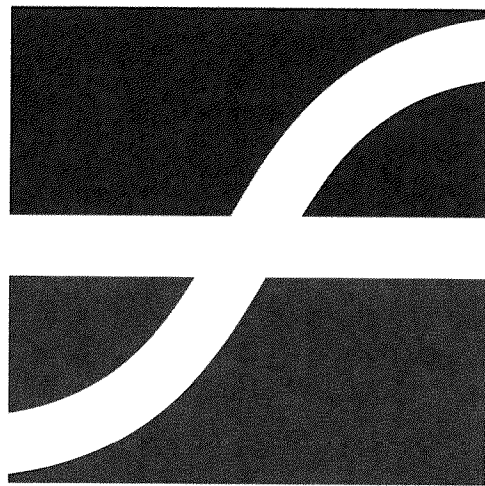

Secretary

EXHIBIT "F"

Initial Design Guidelines



FIELDS

DESIGN GUIDELINES

Effective July 20, 2021

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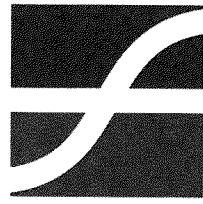
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FIELDS

DESIGN GUIDELINES

1.0. INTRODUCTION

1.1. BACKGROUND

Fields is a mixed use, master planned community located in the City of Frisco, Collin and Denton Counties, Texas, which consists or may consist of a variety of residential, commercial, and industrial uses. With a rich history dating back to the mid-nineteenth century, Fields boasts a landscape with rolling hills and steep slopes for unforgettable views, winding creeks that create new trails to explore, and seemingly endless stretches of green for calm and fresh places to be. FHQ DEVELOPMENT PARTNERS LP, a Delaware limited partnership, as the founder of Fields ("**Founder**") intends to develop Fields as a memorable community that will enhance people's daily lives; a place where people can live, work, learn and play in balance with the natural environment.

The homes and home sites within Fields are subject to the Community Charter for Fields Residential Properties (the "**Charter**"), which provides for standards of architecture, maintenance, use and conduct in order to preserve and enhance the overall community. The Charter establishes Fields Residential Association, Inc., a Texas non-profit corporation (the "**Residential Association**"), whose members include all property owners in Fields, as the entity primarily responsible for administering the Charter and the standards of maintenance, architecture, conduct, and use established pursuant to the Charter.

1.2. PURPOSE

Article 5 of the Charter establishes procedures for application and review of plans for new construction and for modifications to existing homes within Fields. Founder, as the developer of Fields, has established these Design Guidelines for Fields ("**Design Guidelines**") to provide guidance to Owners and their contractors in planning improvements and modifications to Units, structures, and landscaping in Fields. The term "Design Guidelines" shall also mean any and all "**Supplemental Design Guidelines**" (setting forth specific/distinctive architectural standards and guidelines as well as specific planning standards, including but not limited to, minimum setbacks, building heights, home size restrictions, number of stories allowed, etc.) recorded against and applicable to the different "villages" and "neighborhoods" to be developed within Fields. The Design Guidelines are intended to facilitate the review process, but are not the sole basis for decisions on architectural matters. **Compliance with these Design Guidelines does not guarantee approval.**

1.3. GOVERNMENTAL REQUIREMENTS

To the extent that any local government ordinance, building code or regulation imposes a more restrictive standard than the standards set forth in the Charter or these Design Guidelines, the local government

standard shall control. To the extent that any local government standard is less restrictive, the Charter and these Design Guidelines (in that order) shall control.

1.4. INTERPRETATION

In the event of a conflict between these Design Guidelines and the Charter, the Charter shall control. Capitalized terms used in these Design Guidelines and not otherwise defined in this document shall have the same meaning as set forth in the Charter.

1.5. AMENDMENTS

The Founder may amend these Design Guidelines as long as it has any reviewing authority under the Charter. Thereafter, the Design Review Committee ("**DRC**") appointed by the Residential Association's Board of Directors may amend them. Amendments shall not apply retroactively so as to require modification or removal of work already approved and completed or in progress but shall apply to any Unit where construction has not yet begun. It is the responsibility of Owners to ensure that they have the most current edition of these Design Guidelines.

1.6. DESIGN REVIEW PROCESS

A. *OBJECTIVE*

The objective of the review process is to promote aesthetic harmony in the community by providing for compatibility of specific designs with surrounding buildings, the environment, and the topography. The review process strives to maintain objectivity and sensitivity to the individual aspects of design. The design review process has been developed to provide adequate checkpoints in an effort to minimize time spent on concepts which do not adhere to the Design Guidelines. An attempt has been made to streamline this process and eliminate excessive delays. Nevertheless, each Owner is responsible for complying with the Design Guidelines, and all other applicable provisions of the Charter, as well as all the rules and regulations of any governmental authority, in order to bring the design review process to a prompt and satisfactory conclusion.

B. *REVIEW AUTHORITY*

Architectural control and design review is handled by either (a) the Founder or its designee, or (b) the DRC. The Founder has exclusive authority over architectural review until the later of (c) the expiration of the Development and Sale Period, or (d) such time as all Units planned for the property described in Exhibits "A" and "B" to the Charter have been improved with dwellings that are substantially complete and occupied or ready for occupancy. The Founder may delegate authority over certain aspects of review to the DRC, and either of them may use architects, engineers, or other professionals to assist in such review. The term "**Reviewer**," as used in these Design Guidelines, refers to the entity responsible for review of a particular matter.

C. *APPROVAL REQUIREMENT*

Unless otherwise specifically stated in Article 5 of the Charter or in these Design Guidelines, all plans and materials for new construction, landscaping or exterior modifications to homes or landscaping must have prior approval. Where these Design Guidelines specifically allow an Owner to proceed without prior approval, such allowance shall only be effective so long as the Owner complies with the requirements of the applicable guideline. **No site work may be undertaken and no landscaping, structures, improvements, or other items (collectively, "Improvements") may be placed on a Unit until approved by Reviewer in accordance with the Charter and these Design Guidelines.**

Plans submitted to the Reviewer must comply with all applicable building codes, zoning regulations, and the requirements of all agencies and municipalities having jurisdiction over the project. It is the responsibility of the Applicant, as defined below, or the Builder, as defined below, to obtain all necessary permits and inspections. Regulatory approvals do not substitute for review and approval hereunder, and vice versa. **Pursuant to Section 5.1 of the Charter, an Applicant or Builder shall obtain all approvals required pursuant to Charter and these Design Guidelines prior to seeking any approvals or permits required by the City of Frisco, by Collin or Denton Counties, Texas or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.**

All Improvements to a Unit shall be confined to the allowable building area of the Unit ("**Building Envelope**"). The Building Envelope for each Unit shall be determined by the Founder in its sole and absolute discretion.

No Improvements shall be made to a Unit, and the Reviewer shall not review an application, until Founder determines the Building Envelope. Only the Founder, in its sole and absolute discretion, may modify the Building Envelope. Except with the prior written approval of the Reviewer, all areas of a Unit outside the Building Envelope shall remain undisturbed and shall remain in their natural state unless selective clearing or other changes to the natural landscape are mandated by any governmental agency.

D. FEES

When an Owner, his or her builder (hereafter collectively referred to as "Applicant") or a "Builder" (those builders designated by Founder with multiple Units) submits plans to the Reviewer for approval, the submission shall include a "Review Fee." The Review Fee shall be as set forth in Section 1.8, as applicable.

1.7. APPROVED PROFESSIONALS ONLY

Only approved architects, residential designers, landscape architects, landscape contractors, and builders are allowed to provide such professional services within Fields. Approval shall be based on criteria to be determined by the Reviewer and shall be granted at the sole discretion of the Reviewer. Such approved professionals, including but not limited to builders, and their subcontractors, shall be subject to rules and regulations regarding construction at Fields and if these rules are not followed the approved professional and its subcontractor will be subject to fines and/or deductions from any applicable construction deposits and/or having approval to work at Fields revoked at the discretion of the Reviewer. "Fields Qualifications Statements," which serve as applications for professionals to obtain approval, are attached as Exhibit A and Exhibit B. By approving a professional, Reviewer does not in any way assume a duty to ensure or guarantee the quality of the professional's past or future work. Any Person enters into a contract with an approved professional at his or her own risk and should do so after due independent investigation of the professional and not based on reliance on the approval by the Reviewer regarding the merits of the professional.

1.8. DESIGN REVIEWS

A. NEW CONSTRUCTION

The following subsections define the review process for new construction within Fields. Subsection 1.8.A.I and 1.8.A.II details requirements for Builders with multiple Units, Subsection 1.8.A.III details requirements for more "custom" builders, who may build only upon one Unit or upon several Units each with unique home product.

I. REVIEW PROCEDURES FOR BUILDERS WITH MULTIPLE UNITS

(a) **Plan Approval.** The Reviewer for all plans of Builders with multiple Units shall be the Founder. Founder has established procedures to permit preapproval of a Builder's typical floor plans and elevations. Should the Builder's plans be preapproved, such plans may only be used within those designated areas within Fields, subject to continual compliance by the Builder with the requirements in these Design Guidelines and any limitations outlined in any written approval and the Builder's contract for the purchase of Units. Such approvals shall be in writing in accordance with and subject to the following:

- (i) Plans may be submitted no later than 60 days prior to the commencement of construction of Builder's first Unit.
- (ii) The Reviewer may, in its sole discretion, assign any or all of the review process to a third party.
- (iii) The Reviewer or appointed third party shall review all requests for variances.
- (iv) All plans submitted for approval shall include:
 - (A) a floor plan;
 - (B) front, side and rear elevations;
 - (C) lot width;
 - (D) ranges of number of floors, bedrooms, bathrooms and air-conditioned square footage;
 - (E) roof pitch, window and door (including garage) treatments; and
 - (F) garage orientation.
- (v) A Builder shall submit a minimum of either:
 - (A) four distinct floor plans each with a minimum of at least three varying elevations with three approved architectural styles distributed among the elevations; or
 - (B) five distinct floor plans with a minimum of at least two varying elevations with three approved architectural styles distributed among the elevations.

Permitted architectural styles, along with other more detailed planning guidance for each village or neighborhood will be published and recorded by the Founder in the Supplemental Design Guidelines for such village or neighborhood. At least 50% of the total elevations submitted must satisfy the front entry treatment consistent with the styles and requirements set forth in the applicable Supplemental Design Guidelines. Each such floor plan shall be labeled by the approved "Architectural Style" under which it is submitted, shall indicate the "Character-Defining Features" on the elevation and shall identify the "Architectural Requirements" fulfilled.

Builders shall submit all required information online via the submission portal at fieldsfrisco.com/drc. Founder will provide its decisions on the submitted plans for preapproval through electronic mail in one of the following forms:

- "Approved" - The entire application as submitted is approved.
- "Approved as Noted" - The application is not approved as submitted, but the Founder's suggestions for curing objectionable features or segments are noted. The Builder must correct the plan's

objectionable features or segments, and the Builder may be required to resubmit the application and receive approval prior to commencing the construction or alteration.

➤ "Disapproved" - The entire application as submitted is rejected in total. The Founder may provide comments but is not required to do so.

Such decision shall be communicated to the Builder within 30 days after receipt of all submittals (time for both submittal and approval may be altered by mutual agreement). Incomplete submittals will not be reviewed and the Founder may require additional information and may postpone action until all required information has been submitted.

Builders may request a meeting with Founder or its designee during the plan preapproval process. All meeting requests shall be submitted via electronic mail to drc@fieldsfrisco.com. There shall be no fee for an initial meeting. There shall be a fee imposed for a second and subsequent meeting requests as follows:

- Second meeting - \$100
- Third meeting - \$150
- Fourth and each subsequent meeting - \$200

There shall be no fee for Builders seeking preapproval of their initial submission of their plans. The following Review Fees, made payable to Founder, shall apply as follows:

➤ Review Fee of \$150 per elevation shall apply for the initial resubmission of "Approved as Noted" or "Disapproved" plans, which fee shall double for each additional and subsequent resubmittal for each elevation.

➤ Review Fee of \$250 for changes to approved plans.

The preapproval of Builder's plans under this Section shall terminate upon completion of construction of all Units within the Fields area for which they were preapproved or 18 months after the first preapproval of the Builder's plans. Reviewer may permit extension of such time frame upon the request of the Builder at least 10 days prior to such time frame.

(b) Requirements Prior to Commencing Construction. Notwithstanding the fact that a Builder may be using preapproved plans, a Builder shall submit for each Unit a site plan identifying the preapproved plan for the Improvements to be constructed on such Unit. **All such submittals shall be subject to Reviewer's review and approval PRIOR to Builder applying for any applicable building permit for construction on a Unit.**

(i) Approval of plans for individual Units shall be determined by, including, but not limited to, architectural styles, floorplans and elevations of surrounding Units already approved to ensure random arrangement within identified areas in order to create the maximum amount of diversity along streets.

(ii) Any revisions to the preapproved plans, exterior color selections and landscaping plans must be re-submitted for approval.

Founder, in its sole discretion, may grant variances to preapproved plans based upon the planning and design objectives of Fields and these Design Guidelines. Such basis may include limitations caused by topography, natural obstructions, or other environmental considerations. Founder shall under no circumstance be obligated to grant variances to preapproved plans. All variance requests shall be submitted via electronic mail to drc@fieldsfrisco.com. Such electronic mail shall contain a PDF of the preapproved plan along with details and justification for requesting the variance. Founder will provide formal response by

sending either approval or denial of the requested variance within 30 days of its receipt. The fee for requesting and submitting a variance is \$250 payable at the time of such submittal.

II. INDIVIDUAL UNIT REVIEW PROCEDURES FOR BUILDERS WITH MULTIPLE UNITS

The provisions and requirements set forth in this Section 1.8.A.II shall apply to review of proposed Improvements to be made to Units owned by Builders using preapproved plans approved pursuant to Section 1.8.A.I.

(a) **Plan Submittal.** All plan submittals for construction of Improvements on a Unit utilizing preapproved plans shall be delivered to the Reviewer online via the submission portal at fieldsfrisco.com/drc. Any questions shall be submitted via electronic mail sent to drc@fieldsfrisco.com.

(b) **Review Requirements.** Only preapproved plans of a Builder will be reviewed for a specific Unit. The Reviewer will conduct reviews of proposed homes during its regular meetings or at such other times as the Reviewer deems appropriate. An application must be received by the close of business on the first business day of the month one week prior to the Reviewer's committee meeting in order to be placed on the agenda. Builder has the right to make a presentation at any of these meetings provided they request to do so in writing. The required Review Fee shall be made payable to Reviewer as follows:

- Review Fee of \$200 for new construction (original development of a Unit).
- Review Fee for resubmission of "Approved as Noted" or "Disapproved" plans shall be \$75 for the initial resubmittal, which fee shall double for each additional and subsequent resubmittal.
- Review Fee of \$250 for changes to approved plans.

Builders shall submit all required information online via the submission portal at fieldsfrisco.com/drc. Founder will provide its decisions on the submitted plans for preapproval through electronic mail in one of the following forms:

- "Approved" - The entire application as submitted is approved.
- "Approved as Noted" - The application is not approved as submitted, but the Founder's suggestions for curing objectionable features or segments are noted. The Builder must correct the plan's objectionable features or segments, and the Builder may be required to resubmit the application and receive approval prior to commencing the construction or alteration.
- "Disapproved" - The entire application as submitted is rejected in total. The Founder may provide comments but is not required to do so.

Incomplete submittals will not be reviewed and the Founder may require additional information and may postpone action until all required information has been submitted. The Reviewer will respond in writing in 30 calendar days or less after a submittal is received. Results of the review will not be discussed over the telephone. Any responses an Owner may wish to make in reference to issues contained in the Reviewer's notice following review of submittals must be addressed to the Reviewer in writing.

If the Reviewer fails to respond within 30 calendar days, the Builder shall give the Reviewer written notice of its failure to respond. Unless the Reviewer responds within an additional 10 days of receipt of such notice, approval shall be deemed granted. However, no construction or modification that is inconsistent with the Charter or the Design Guidelines shall be deemed approved, unless the Reviewer has granted a variance in accordance with the Charter.

(c) **Submittal Requirements.** All submittals for specific Unit review shall conform to the following requirements:

(i) Site Plan. The site plan will identify the proposed building "footprint," the property boundaries and easements, utility locations, existing and proposed 1'-0" contours, areas of cut and fill, drainage, driveways, sidewalks, decks, service yards and equipment, easements on lot, walls and fencing, and any other proposed improvements. Indicate scale and north orientation.

(ii) Floor Plan. The floor plans shall include all room dimensions, door and window locations and sizes, and location of mechanical and electrical systems.

(iii) Exterior Elevations. Exterior elevations shall:

(A) be drawn to such scale necessary to convey architectural design, detailing and materials;

(B) indicate the exterior appearance of all views and label them in accordance with the site plan;

(C) specify plate heights;

(D) specify the height of any chimney as compared with the ridge of the roof;

(E) show natural and finished grade for elevations of all views;

(F) describe all exterior materials, colors, and finishes (walls, roofs, trim, chimneys, windows, doors, etc.); and

(G) indicate material textures.

(iv) Building Sections. Building sections shall indicate building walls, floors, interior relationships, finished exterior grade and any other information to clearly describe the interior/exterior relationships of the buildings.

(v) Roof Plan. The roof plan shall indicate flat and sloped roof areas, roof decks, or porches, and how they are drained, trellis areas, skylights, and location of exterior walls and columns in relationship to roof edge.

(vi) Plan Detail. Plans shall provide details to sufficiently represent the visual expression of the building, exposed connections, and material interfaces.

(vii) Landscaping. A landscaping plan for each individual Unit shall be submitted which shall include:

(A) location, species, and caliper size of all trees;

(B) planting plan as well as all proposed plant materials;

(C) all lawn areas with proposed sod specification;

(D) location of decks or patios, fences, walls, service yards, driveways, other freestanding structures, gazebos, pools, etc.; and

(E) detailed location of all outdoor lights.

(d) Construction Review. Any modification to the plans approved for the construction of Improvements to an individual Unit before or during construction requires approval from Reviewer. Requests shall be submitted via electronic mail to drc@fieldsfrisco.com. Such electronic mail shall contain a PDF of the modified plans along with such details and reason for requesting the specific modifications. No construction on a Unit shall commence, if the requested modification is made before commencing construction, or shall continue, if the requested modification is made after construction has begun, until the

Reviewer approves or rejects the modification. In the event the modification is rejected, construction may be only undertaken in accordance with the previously approved plans.

(e) **Final Site Review.** Final site review of the Improvements to a Unit by the Reviewer or its designee and written final approval is required prior to closing to a homeowner.

(i) This review is to provide an opportunity for the Reviewer to identify any material deviations from the approved plans and to confirm that all landscaping and fencing requirements have been met.

(ii) Before final site review, the construction of the home must be completed. Final site review shall occur prior to a certificate of occupancy being applied for by the Builder.

(iii) The installation of the approved landscaping must be complete and must conform to the Design Guidelines.

(iv) Prior to review, all building debris must be removed from the site, the adjacent Units, surrounding area, and the construction site sign and any temporary power pole must be removed. Erosion control must be re-established on adjacent Units.

(v) Upon completion of the home and all landscaping and related Improvements as set forth in the previously approved plot plan, exterior color selections and landscaping plans, and compliance with item 4 above, the Builder shall provide written notice to the Reviewer via electronic mail to drc@fieldsfrisco.com and request a final inspection. Such written notice shall include photos of all Improvements. In order to avoid delay in closing a Unit with a purchaser, such notice should be given as soon as possible after completion, but at least seven days prior to the scheduled closing date.

(vi) Any unauthorized changes to previously approved plans must be corrected before final review approval will be issued.

(vii) **The final site review is mandatory.** It is each Builder's sole responsibility to be familiar with and ensure that each dwelling is compliant with these Design Guidelines and the approved plans and specifications prior to move-in. Builders must allow ample time (five to ten business days, excluding holidays), before closing for the final site review to be completed. The Reviewer has sole discretion to approve or disapprove any submittal.

(f) **Variances.** Variances may be granted in some circumstances (including, but not limited to, topography, natural obstructions, hardship, or environmental considerations) when deviations may be required. The Reviewer shall have the power to grant a variance from strict compliance in such circumstances, so long as the variance does not result in a material violation of the Charter. No variance shall be effective unless in writing. A Review Fee of \$250 shall be applicable for each variance requested by a Builder.

(g) **Appeals.** A Builder shall have the right to appeal a decision of the Reviewer by resubmitting the information, documents, and fees set forth above; however, such appeal shall be considered only if the Builder has modified the proposed construction or modification or has new information which would, in the Reviewer's opinion, warrant a reconsideration. If Builder fails to appeal a decision of the Reviewer, the Reviewer's decision is final. In the case of a disapproval and resubmittal, the Reviewer shall have 30 days from the date of each resubmittal to approve or disapprove any resubmittal. The filing of an appeal does not extend any maximum time period for the completion of any new construction or modification.

(h) **Inspection.** Within 14 days of the completion of all approved Improvements, and prior to the scheduled closing date, the Builder shall notify the Reviewer and schedule an inspection to verify conformance with the approved submittal.

III. REVIEW PROCEDURES FOR CUSTOM-BUILT PRODUCT

(a) **General Guidelines.** Permitted architectural styles, along with other more detailed planning guidance for each village or neighborhood will be published and recorded by the Founder in Supplemental Design Guideline for such village or neighborhood. All drawings must be of sufficient quality to fully convey to the Reviewer the design intent and quality of the completed project. All submittals shall be drawn to scale and include a north arrow. Each item submitted shall also include Unit number, name and address of the Owner and architect and building contractor if applicable.

Submittals may be delivered to the Reviewer online via the submission portal at fieldsfrisco.com/drc. Any questions shall be submitted via electronic mail sent to drc@fieldsfrisco.com.

(b) **Orientation and Pre-Design Submittal and Orientation.** Orientation is an introductory meeting with the Applicant and a representative of the Reviewer and is strongly suggested. The meeting may take place as a conference call. However, an in-person meeting is preferred. This meeting will cover the design standards, the design review process, fee schedule, and general information about building a house in Fields. The Owner's architect/designer and builder, if selected, are encouraged to attend this meeting. The Applicant is encouraged to bring any conceptual ideas and drawing to this meeting for review.

A pre-design submittal with the Reviewer is optional. A minimal fee may be assessed for such a pre-design submittal although one pre-design submittal is included at no extra cost with the submission fee for a single-family residence new construction. The Reviewer will provide comments and recommendations regarding the pre-design submittal preliminary to the design of a home based on the sketches and ideas forwarded by the building contractor or prospective Owner.

(c) **Preliminary Design Review.** A Preliminary Design Review is required. Preliminary Plans must be presented at a scale specified by Reviewer. Submissions for Preliminary Review shall include the following and any other information reasonably required by the Reviewer.

(i) **Preliminary Site Plan.** A preliminary site plan shall be submitted that shows the Unit boundaries, the Building Envelope, existing trees over 3" caliper, and approximate location and dimensions of all easements and improvements. The plan shall include a dashed outline of the roof plan of any proposed structures. The plan shall include annotations that include parking, any mechanical units, setbacks, and proposed elevation. The plan shall also indicate Unit area and location of existing and proposed structures. In addition to the existing structures on the Unit, the site plan shall also include the proposed structures on the Unit in context with the other homes and structures at Fields. This secondary site plan will be referred to as a "context map."

(ii) **Preliminary Floor Plans.** Preliminary floor plans shall be submitted that indicate the entire proposed floor levels of all structures proposed for the site. The plans shall include overall dimensions, area calculations (including conditioned, unconditioned enclosed and unconditioned covered areas), and finished floor elevations.

(iii) **Preliminary Exterior Elevations.** The submission shall include exterior elevations including attached building or secondary structures. The elevations shall be annotated to indicate overall height of all proposed structures.

(d) **Final Design Review.** A Final Design Review by the Reviewer is required. The following information is required to be included in the Final Design Review. All sites must be coordinated with the Fields overall site plan for drainage, roads, sidewalks, street trees and common areas including preserve areas. Final design plans and drawings must contain appropriate stamps from architects and or engineers. As a part of the final site plan review, Applicant shall stake out the corners of all structures to be located on the Unit.

- (i) Site Plans. The final site plan shall include:
 - (A) a survey showing tree and topographical information by a Reviewer approved surveyor or engineer;
 - (B) a clearing and grading scheme and drainage plan with proposed and existing land contours, grades and flow of the site drainage system. Culverts and swales shall be included;
 - (C) the dimensions and locations of all buildings, access drives, parking, utilities locations (water, power, telephone, cable, etc.), street pavement locations, driveways (including surface material), sidewalks (including surface material), foundation outlines, roof drip lines, pools, decks, patios, and all other proposed Improvements to the site;
 - (D) the Building Envelope;
 - (E) property lines, easements, setbacks and rights-of-way;
 - (F) existing grade and finished floor elevations for all Improvements;
 - (G) buffers and wetlands; and
 - (H) flowage easements.

(ii) Floor Plans. The final floor plan shall include notes and other annotations to delineate the complete design intent. This shall include but not be limited to any exterior lighting, walls, fencing and screening, equipment, meters, trash and utility areas, patios, decks, pools, roofs (sections, pitch and type), doors, windows, porches and signage. The materials used in all construction visible from the exterior of the structure must be delineated and approved and include the following: specifications, manufacturers, models (if applicable), typical wall sections, trim detail, paint color chips, all exterior fixtures including light fixtures, and as further necessary to fully convey the proposed appearance of the structure.

(iii) Other Reviewer Submittal Information. The Reviewer may require, at its discretion, other information including details, sections, samples, product information and other items, as reasonable, to fully understand and determine the compatibility of a submission.

(e) **Landscape Design Review**. A Landscape Design Review is required at the same time as the Final Design Review by the Reviewer.

(f) **Review Procedures**. The Review Fee shall be made payable to Reviewer as follows:

➤ Review Fee of \$750 to \$2,000 for new construction (original development of a Unit, which shall include a pre-design submittal, one preliminary and one final review). Such fee shall be set by the Reviewer, in its sole discretion, based on the complexity of the review.

➤ Review Fee for changes to approved or resubmission of "Approved as Noted" or "Disapproved" plans shall be \$500.

➤ Review Fee for review of proposed changes to existing Improvements or alterations after a certificate of occupancy has been granted for the Improvement on the Unit shall be 1% of total estimated cost of work or \$1,500 whichever is greater.

Additional review if required shall be subject to additional reasonable fees in amounts to be determined by the Reviewer.

The Reviewer will conduct reviews of proposed homes during its regular meetings or at such other times as the Reviewer deems appropriate. An application must be received by the close of business on the first

business day of the month one week prior to the Reviewer's committee meeting in order to be placed on the agenda. Applicant has the right to make a presentation at any of these meetings provided they request to do so in writing. The Reviewer will respond in writing in 30 calendar days (40 if the Reviewer is the DRC) or less after a submittal is received. Results of the review will not be discussed over the telephone. Any responses an Owner may wish to make in reference to issues contained in the Reviewer's notice following review of submittals must be addressed to the Reviewer in writing. The Reviewer's decision shall be rendered in one of the following forms:

- "Approved" - The entire application as submitted is approved.
- "Approved as Noted" - The application is not approved as submitted, but the Reviewer's suggestions for curing objectionable features or segments are noted. The Applicant must correct the plan's objectionable features or segments, and the Applicant may be required to resubmit the application and receive approval prior to commencing the construction or alteration.
- "Disapproved" - The entire application as submitted is rejected in total. The Reviewer may provide comments but is not required to do so.

If the Reviewer fails to respond within 30 calendar days (40 if the Reviewer is the DRC), the Applicant shall give the Reviewer written notice of its failure to respond. Unless the Reviewer responds within an additional 10 days of receipt of such notice, approval shall be deemed granted. However, no construction or modification that is inconsistent with the Charter or the Design Guidelines shall be deemed approved, unless the Reviewer has granted a variance in accordance with the Charter.

(g) Construction Review.

(i) Construction Layout Review. Once the Reviewer approves the Final Design and the construction deposit is received, the Contractor shall submit to a Construction Layout Review by the Reviewer or its agents before any Improvements on a Unit are actually commenced. Such review requires the Applicant to stake out the property lines, setbacks lines and corners of the building, and to mark trees to be removed on the site. Reviewer appointees must review and approve the layout before construction can commence. If the layout or planned tree removal is deemed unacceptable or not in compliance with the previously approved Final Design Review, additional Reviewer approval must be sought for changes to the previously approved plans.

(ii) Mock-Up Review. An exterior mock-up showing the roof material, trim, exterior walls, windows, gutters, etc. may be constructed and approved by the Reviewer prior to construction.

(iii) Rough-In Construction Review. Once the building is dried-in, Reviewer staff will review the project and note deviations from the approved plans. The Reviewer will be consulted regarding any such deviations and will direct how to address the deviations. The Reviewer may direct that work be torn out and redone if not done according to approved plans.

(iv) Final Landscape and Construction Review. Once a project is substantially complete, letters must be provided to the Reviewer by (A) the architect or designer of record and (B) the landscape architect of record both certifying that the work on the property at issue has been substantially completed in accordance with the approved plans. Additionally, a registered surveyor or civil engineer must certify in a letter to the Reviewer that as built, the site grading and drainage improvements and finished floor elevations are in place pursuant to approved plans.

After receiving the three required certifications, Reviewer staff will review the project for substantial compliance with approved plans. If all work is complete and executed in substantial compliance with the approved plans, the Reviewer will issue a final approval letter. If deficiencies are noted, staff will develop a list of required corrections, and the Owner will notified in writing. Once this list is corrected, staff will re-

inspect once and Reviewer will issue a final approval letter if appropriate. Additional reviews or continued deficiencies will prevent the issuance of the final letter of approval and may cause additional re-inspection fees. If deficiencies persist over 30 days from the initial Final Landscape and Construction Review, the Reviewer may execute the required corrections at the expense of the Owner. The cost of correction may further be deducted from the construction deposit. No home shall be occupied until the Reviewer has issued the final approval letter. Within 14 days after the date of the final approval letter, the balance of the construction deposit shall be returned to the Owner.

(v) Changes After Approval. All proposed changes to plans, including changes that affect the exterior of any building, colors, windows, grading, paving, utilities, landscaping or signage, made after the approval of plans must be submitted to and approved in writing by the Reviewer prior to implementation. Close cooperation and coordination between the Applicant and the Reviewer will ensure that changes are approved in a timely manner.

(vi) Variances. Variances may be granted in some circumstances (including, but not limited to, topography, natural obstructions, hardship, or environmental considerations) when deviations may be required. The Reviewer shall have the power to grant a variance from strict compliance in such circumstances, so long as the variance does not result in a material violation of the Charter. No variance shall be effective unless in writing. A Review Fee of \$250 shall be applicable for each variance requested by Applicant.

(vii) Appeals. Any Applicant shall have the right to appeal a decision of the Reviewer by resubmitting the information, documents, and fees set forth above; however, such appeal shall be considered only if the Applicant has modified the proposed construction or modification or has new information which would, in the Reviewer's opinion, warrant a reconsideration. If Applicant fails to appeal a decision of the Reviewer, the Reviewer's decision is final. In the case of a disapproval and resubmittal, the Reviewer shall have 30 days from the date of each resubmittal to approve or disapprove any resubmittal. The filing of an appeal does not extend any maximum time period for the completion of any new construction or modification.

B. *REVIEW PROCEDURES - ALTERATIONS/MODIFICATIONS*

The Reviewer shall review and must approve prior to construction or any other action any modifications, changes, additions or deletions to any Unit after initial construction is complete. Such review will consist of a single submission and consideration by the Reviewer. The Applicant shall provide information sufficient to convey the substance of the request to the Reviewer in a form acceptable to the Reviewer. The type and scope of the project will determine whether the Owner may perform the work or charge himself or herself or if an approved professional will be required by the Reviewer.

1.9. IMPLEMENTATION OF APPROVED PLANS

All Improvements must conform to approved plans. If it is determined by the Reviewer that Improvements completed or in progress on any Unit are not in compliance with these Design Guidelines or any approval issued by the Reviewer, the Reviewer shall notify the Applicant or a Builder in writing of such noncompliance specifying in reasonable detail the particulars of noncompliance and shall require the Applicant or a Builder to remedy the same. If the Applicant or a Builder fails to remedy such noncompliance or fails to commence and continue diligently toward achieving compliance within the time period stated in the notice, then such noncompliance shall be deemed to be in violation of the Charter and these Design Guidelines.

➤ **Time to Commence.** If construction does not commence on a project for which plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Applicant to resubmit the plans to the appropriate committee for reconsideration.

➤ **Time to Complete.** The Reviewer shall include in any approval a maximum time period for the completion of any new construction or modification. If no maximum time period is specified in the approval, construction shall be completed within one year of its commencement. The Applicant may request an extension of such maximum time period not less than 21 days prior to the expiration of the maximum time period, which the Reviewer may approve or disapprove, in its sole discretion.

If construction is not completed on a project within the period set forth in the approval, within the one year default period, if applicable, or within any extension approved by the Reviewer, the approval shall be deemed withdrawn, and the incomplete construction shall be deemed to be in violation of the Charter and these Design Guidelines. In the event of such violation, the Reviewer may notify the Residential Association of such failure and the Residential Association, at its option, shall either complete the exterior of the home in accordance with the approved drawings, or remove the Improvements and return the Unit to its natural state prior to the beginning of any Improvements. The Owner shall reimburse the Residential Association for all expenses incurred therewith. Such expenses shall be a Specific Assessment levied against the Unit and shall constitute a lien upon the Unit.

1.10. GOVERNMENTAL APPROVAL

The review and approval of plans and specifications shall not be a substitute for compliance with the permitting and approval requirements of the City of Frisco, by Collin or Denton Counties, Texas or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters. It is the responsibility of Applicant to obtain all necessary permits and approvals and submit copies of all permits to Reviewer.

If any such entity having jurisdiction over the Unit requires that changes be made to final construction plans previously approved by the Reviewer, the Owner must notify the Reviewer of such changes and receive approval from the Reviewer prior to implementing such change.

1.11. RESPONSIBILITY FOR COMPLIANCE

An Applicant is responsible for ensuring that all of the Applicant's representatives, including the Applicant's architect, engineer, contractors, subcontractors, and their agents and employees, are aware of these Design Guidelines and all requirements imposed by the Reviewer as a condition of approval.

1.12. INSPECTION

Within 14 days of the completion of all approved Improvements, the Owner is responsible for notifying the Reviewer and scheduling an inspection to verify conformance with the approved submittal.

2.0. CONSTRUCTIONS STANDARDS

The following construction standards shall be applicable to all construction activity in Fields in addition to standards in the Charter, in the agreement an approved professional must execute in order to be an approved contractor in Fields, local ordinances, codes, regulations and other laws. Owners of property are responsible for the actions of their hired approved professionals and their subcontractors in Fields. Builders are responsible for the actions or omissions of their subcontractors or employees.

2.1. CONSTRUCTION DEPOSIT

To guarantee that the construction standards are adhered to, each Applicant (but not a Builder), before beginning any construction, shall post a cash deposit in the amount of \$10,000 with the Reviewer. Should it become necessary for the Reviewer to remedy any violation of these construction standards, the costs of such remedy will be charged against the deposit. Should the deposit ever fall below \$2,000 due to Reviewer drawing upon such deposit to remedy any violation of these construction standards, Applicant shall make an additional deposit to replenish the deposit amount to \$10,000. The obligation of the Applicant to repair, correct, complete or otherwise comply with these construction standards shall not be limited to the amount of such deposit. Upon completion of construction (including, but not limited to, installation of all landscaping in accordance with the approved plans as required by Section 1.8.A.III(g)(iv) of these Design Guidelines) and receipt by the Reviewer of the required certifications by the architect, landscape architect and surveyor or engineer pursuant to Section 1.8.A.III(g)(iv) of these Design Guidelines, the deposit, less any expenses to cure any violations, shall be returned to the Applicant. Any additional expense over and above the deposit incurred by the Reviewer in enforcing compliance with the Design Guidelines will be recorded against the Unit and secured by a lien until paid.

2.2. PRE-CONSTRUCTION CONFERENCE

Prior to commencing construction, the Applicant or Builder shall meet with the Reviewer to review construction procedures and to coordinate construction activities. The Applicant or Builder shall supply the construction gate guard with an up to date list of all employees, suppliers, subcontractors, and agents who will have access to and from the Unit during construction. All the aforementioned shall stop and register at the construction gate upon each visit to the site.

2.3. GOVERNING AUTHORITY

All Applicants and Builder shall comply with the regulations of any governing authority, as well as all applicable Occupational Safety and Health Act (OSHA) regulations and guidelines.

2.4. CONSTRUCTION TRAILERS, PORTABLE FIELD OFFICES, ETC.

Any Applicant and Builder who desires to bring a construction trailer, field office or like to Fields shall first apply for and obtain written approval from the Reviewer. To obtain such approval, Applicant or Builder shall submit a copy of the architect's site plan with proposed locations of the construction trailer or field office, and the trash receptacle noted thereon. Such temporary structures shall be removed upon completion of construction. The trash receptacle shall be of an approved size.

2.5. LAND CLEARING, GRADING AND START OF CONSTRUCTION

No land clearing, construction work or placement of construction material will be permitted until all required governmental permits are obtained and formal written approval of the Reviewer has been granted.

The construction layout review must also have taken place satisfactorily before such work can be done. Fill shall not be deposited at any location without prior Reviewer approval. No clay fill will be permitted. Cuts and fills shall be designed to complement the natural topography of the site. No grading, cutting or filling shall be commenced until erosion and sedimentation control devices, identification marking, and protection fencing have been installed between the disturbed area and water bodies, watercourses, wetlands and storm drain inlets. No construction or clearing is allowed on any conservation easement. Contractor shall obtain proper permission for location of any construction trailers.

2.6. STORAGE OF CONSTRUCTION MATERIAL

The storage of all construction materials will be in designated areas only.

2.7. PROTECTION OF TREES

Grading, unless otherwise approved by the Reviewer, shall not disturb existing trees and vegetation. During construction, building contractors and their subcontractors shall be responsible for protection of all trees to be retained on the site, including root zones, trunks, limbs, and canopies. A penalty will be imposed for damage to trees to remain in place.

2.8. EROSION CONTROL

Erosion control measures (silt fencing) are required on all sites. All reasonable methods to prevent erosion must be included in plan submittals. Erosion control measures must be maintained until the site has been landscaped. Silt fencing must be in place on three sides of buildings at all times. The Reviewer reserves the right to require silt fencing to be placed on all property lines to retard debris blowing from construction to waterways, common areas and/or streets. Conservation areas shall be retained in their natural state to a minimum distance of 30 feet along all wetlands, if any. The width of the buffer shall be sufficient to prevent erosion, trap the sediment in overland runoff, provide access to the water body and allow for periodic flooding without damage to structures.

2.9. DRAINAGE

Effects on existing drainage structures shall be minimized. Fields is subject to an approved master drainage plan and all Unit drainage must coordinate and comply with this master drainage plan. The flow of water shall be directed to existing drainage structures in such a manner as to minimize run-off onto adjacent property. All reasonable methods to prevent erosion must be included in plan submittals. Paved areas shall be designated so that surface water is collected in a manner that will not create puddles or ponding.

2.10. PRESERVE AREAS

"Preserve" or "Tree Save" areas exist throughout Fields. Except as stated herein or as specifically permitted by the Reviewer, the Reviewer will not allow Owners, builders, landscape contractors or any other person to consider any construction, Improvement, grading, excavating, tree removal, landscaping or any other change to the preserve areas. The following restrictions apply to all activity on or near preserve areas:

➤ All edges of any identified preservation area adjacent to or within a site must be field staked and guarded with a line of continuous silt fencing. All such fencing must be maintained in good working order throughout the entire construction schedule. Preserve areas must be clearly marked and identified to workers on site.

➤ Trees, under story and shrubs in preserve areas are to remain untouched and unharmed and must have complete perimeter tree protection fencing (orange) erected at the canopy drip line.

- The dumping of anything in these areas is strictly prohibited.
- No vehicles shall be driven in this area.

2.11. CONSTRUCTION DAMAGE

Any damage to streets, curbs, drainage inlets and swales, sidewalks, street lights, street markers, signage, mailboxes, landscaping, etc., by an Owner, building contractor, landscape contractor, or sub-contractor will be repaired immediately by the Owner, builder, landscape contractor or sub-contractor as applicable. If this is not done, the Reviewer or Founder will cause repairs to be done and such costs billed to the responsible party plus a 10% assessment for administrative costs. Such costs shall be deducted from the applicable construction deposit. An operator of a vehicle is responsible for immediate clean-up of any load spillage from the vehicle, including fill dirt, wet concrete, trash or debris.

2.12. BUILDER SIGNAGE

Only a Reviewer approved sign, showing the Owner, builder, and architect or the Builder will be allowed on each Unit during construction. No other signs will be allowed and all other documents and permits must be contained in a document box attached to the rear of the approved builder signage. A copy of all applicable Reviewer approval letters for all work approved must be on site during construction. The Reviewer will provide information on how to order an approved sign.

2.13. DAMAGE TO UTILITY LINES

If any telephone, cable television, electrical, water, etc., line is cut by Owner, builder, Builder landscape contractor or sub-contractor, it is such person's responsibility to report the accident to the Founder within 30 minutes of the damage. The responsible party must repair damage immediately or arrange for the appropriate installer to repair damage immediately at the expense of the party responsible. If the Founder must do such work, the expense plus a 10% assessment for administrative costs will be assessed to the appropriate party and shall be deducted from the construction deposit if appropriate.

2.14. INSURANCE

Each approved professional as set forth in Section 1.7 of these guidelines shall maintain comprehensive general liability insurance, including coverage for contractual liability, operations liability, explosion, collapse and underground damage liability, with a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence or such lesser amount as may be acceptable to Founder, covering all losses, damages and claims arising out of such professional's occupation, use of, activities on and ownership of property within Fields, including property damage, bodily injury and death. The policy shall name the professional and Founder as insured parties.

Each approved professional shall also maintain (a) workers compensation insurance, if and to the extent required by law; (b) automobile liability insurance covering all motor vehicles owned, hired or used in connection with Applicant's or Builder's construction activities within Fields; and (c) for building contractors, builder's risk insurance covering the building contractor's activities within Fields, all in such amounts as are reasonably acceptable to Founder.

2.15. PORTABLE TOILETS AND CONSTRUCTION DUMPSTERS

Prior to commencing construction work, a portable toilet must be placed on the Unit where the construction is to take place with the door facing away from the street. The portable toilet and any construction dumpster must be placed in a manner so as to least disturb other Units and other construction

and must be removed from the property as soon as practicable after construction activity on the Unit no longer requires their presence. Dumpsters and portable toilets shall not be placed in the street.

2.16. CONSTRUCTION TRAFFIC

All construction traffic shall access Fields through the designated construction entrance as designated by the Reviewer. For security purposes, all approved professionals (as set forth in Section 1.7 of these Design Guidelines) doing work within Fields must furnish a complete list of their contractors, subcontractors, and employees who are permitted entry into Fields. Construction passes must be issued to each such person doing work in Fields and a reasonable charge may be assessed for such passes. Such construction passes must be visible within the vehicles of contractors, subcontractors or their employees at all times while in Fields. The speed limit within Fields is 15 miles per hour. Workers who are caught speeding or reported or identified to be speeding after an initial first time warning shall be prohibited from driving in Fields.

2.17. CONSTRUCTION RELATED VEHICLES OR EQUIPMENT

No construction related vehicle shall be parked on any property other than property where it is actively involved in construction. Washing of any construction vehicles or equipment anywhere in Fields is prohibited. No construction related vehicles (trucks, vans, cars, etc.) shall be left in Fields overnight. Construction equipment may be left on the site when necessary, but must be kept off the street, unless prior permission has been granted.

2.18. USE OF OR ACCESS THROUGH ADJACENT UNITS OR COMMON AREAS

The use of access through adjacent Units for construction activities is strictly prohibited without written permission from the adjacent Owner. The use of or access through Common Areas for construction activities is strictly prohibited without express permission of the Reviewer.

2.19. WORK SCHEDULE

Sunday work is not allowed. Daily work hours shall not start before 7:00 a.m., Monday through Friday and not before 9:00 a.m. on Saturday. All work shall cease by 6:00 p.m. The Reviewer may approve additional hours for good cause shown.

2.20. NOISE LEVELS

Absolutely no radios or other music is to be played outside during construction. Radios or other music played inside must be kept to a level that cannot be heard outside of a structure.

2.21. TRASH AND CLEAN-UP

All construction sites in Fields must be maintained in a neat and orderly fashion and clean-up of construction sites shall occur on a daily basis. All trash must be contained in a lidded trash container located on the construction site which shall be removed and cleaned out everyday. The Applicant or Builder on an active construction site is responsible for trash that blows off the site and shall retrieve such trash immediately. There will be no stockpiling or dumping of trash or materials on adjacent Units or on streets, driveways, easements or Common Areas. Any trash not timely removed from the construction site will be removed by the Reviewer or Founder and the cost for such removal shall be billed to the responsible party plus a 10% administrative assessment. Workers who throw their trash out of cars or trucks shall be prohibited from working on jobsites in the project.

2.22. UTILITY USE

Builder and subcontractors will use only the utilities provided on the immediate site on which they are working.

2.23. FIRES

No open fires or burning of trash or debris is allowed on any construction site.

2.24. PERSONNEL

Only bona fide workers involved in construction are allowed in Fields as part of a construction operation. Such workers are required to exit Fields upon completion of their work. Spouses of workers may drive their spouse to and from the construction site, but must not remain on the property unless they are actual employees of a builder or a subcontractor. No minor children are permitted to be at Fields related to construction operations unless they are bona fide workers. Construction workers shall not bring pets onto Fields property. Contractors shall not have or drink alcoholic beverages while at Fields during construction activity.

2.25. BLASTING

If any blasting is to occur, the appropriate governmental entity and the Reviewer must be informed far enough in advance to make sure the Owner has obtained the advice of expert consultants that blasting may be accomplished safely. These consultants must so advise the Reviewer in writing. No blasting or impact digging causing seismic vibrations may be undertaken without the approval of the Reviewer, which shall be based upon such advice from a qualified consultant. Applicable governmental regulations concerning blasting must be observed. The Reviewer's only responsibility is to require evidence of such consultant's expertise and shall have no liability for the blasting.

2.26. EXCAVATION MATERIALS

Excess excavation materials must be hauled away from Fields and properly landfilled. Failure to do so shall result in the Reviewer removing the material and charging the expense against the construction deposit.

2.27. CONSTRUCTION FENCING

To protect the area outside the construction site from damage due to construction operations, a temporary fence, approved by the Reviewer, shall be installed to completely enclose such area as such is depicted on the Final Plans. Such fence shall have a single entrance located at the driveway entrance and shall remain until completion of construction and then promptly removed. Security lights, audible alarms and guard animals will not be permitted.

The construction trailer, if any, sanitary facilities, construction material storage and trash receptacle must be contained within such fence. Under special circumstances, and with the prior approval of the Reviewer, construction materials may be stored outside such fence.

In the event it is necessary to conduct construction activities outside the fence, Applicant or Builder shall submit to the Reviewer a boundary description of the proposed encroachment. Such encroachment shall be returned to its original condition upon completion of construction.

2.28. MISCELLANEOUS AND GENERAL PRACTICES

All Applicants and Builders will be absolutely responsible for the conduct and behavior of their agents, representatives, contractors and subcontractors while in Fields. The following practices are prohibited:

➤ Changing oil on any vehicle or equipment on the Unit itself or at any other location within Fields other than at a location, if any, designated for that purpose by the Reviewer.

➤ Allowing concrete suppliers, plasterers, painters, or any other subcontractors to clean their equipment anywhere but the location specifically designated for that purpose by the Reviewer. Such cleaning outside the designated area anywhere on the Unit is strictly prohibited. Violation of this provision will result in a \$2,000.00 per occurrence or the repayment of expense of repairing the damage, whichever is greater.

➤ Removing any rocks, plant material, topsoil, or similar items from any property of others within Fields, including other construction sites.

➤ Carrying any type of firearms within Fields.

➤ Using disposal methods or equipment other than those approved by the Reviewer.

➤ Careless disposition of cigarettes and other flammable material. At least three 10-pound ABC-rated dry chemical fire extinguishers shall be present and available in a conspicuous place on the construction site at all times.

➤ Smoking by construction workers outside the area designated for smoking. Such areas will be contained within the construction site and Applicants and Builder shall provide ash cans.

➤ Destruction or removal of protected plant materials or plants not previously approved by the Reviewer.

➤ Radios and other audio equipment which can be heard outside the construction site. Electronic equipment is recommended to have headphones.

➤ The use of horns by any catering trucks. Trash generated by the purchase of items shall be contained and disposed of properly. Repeated problems with these requirements will result in the catering trucks being denied admittance to Fields.

3.0. RIGHTS AND ORGANIZATION

3.1. INCORPORATION

The provisions of the Charter applicable to design and landscape control are incorporated herein by reference, and control over provisions herein, in case of a conflict.

3.2. ENFORCEMENT

In the event of any violation of these Design Guidelines, the Founder or the Board may take any action set forth in the By-Laws or the Charter, including the levy of a specific assessment pursuant to Section 12.4 of the Charter. The Founder or the Board may remove or remedy the violation and/or seek injunctive relief requiring the removal or the remedying of the violation. In addition, the Founder or the Board shall be entitled to recover the costs incurred in enforcing compliance and/or impose a fine against the Unit upon which such violation exists.

3.3. NON-LIABILITY FOR APPROVAL OF PLANS

Article 5 of the Charter contains a disclaimer of liability or responsibility for the approval of plans and specifications contained in any request by an Owner. **PRIOR TO SUBMITTING PLANS OR INFORMATION FOR REVIEW, YOU SHOULD READ AND UNDERSTAND THIS DISCLAIMER. IF YOU DO NOT UNDERSTAND IT, PLEASE ASK A REPRESENTATIVE OF THE REVIEWER TO EXPLAIN IT TO YOU.**

3.4. RIGHT OF WAIVER

The Reviewer reserves the right to waive or vary any of the procedures or standards set forth at its discretion, for good cause shown. However, any approval by the Reviewer of any drawings or specifications or Improvements done or proposed, or in connection with any other matter requiring such approval under the Design Guidelines or the Charter, including a waiver by the Reviewer, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar drawing, specification, or matter whenever subsequently or additionally submitted for approval. For example, the Reviewer may disapprove an item shown in the Final Submittal even though it may have been evident and could have been, but wasn't, disapproved at the Preliminary Submittal.

Furthermore, should the Reviewer overlook or not be aware of any item of non-compliance at anytime during the review process, construction process or during its Final Inspection, the Reviewer in no way relieves the Owner from compliance with the Design Guidelines and all other applicable codes, ordinances and laws.

3.5. CERTIFICATE OF COMPLIANCE

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

3.6. SEVERABILITY

If any provisions of these Design Guidelines shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Design Guidelines to the extent that they can reasonably understood without the invalid portion(s).

Exhibit A: Architect/Residential Designer Qualifications Statement

Architect/Residential Designer Qualifications Statement

Name: _____ Phone: _____
Address: _____ Fax: _____
_____ Email: _____

Type of Organization:

- Corporation
- Partnership
- Individual
- LLC
- Other

Statement of Purpose: _____ Pre-Qualification _____ Project for Client

1. Experience

Please submit a resume of work in progress or completed projects. Resume must include photos.

2. Reference

Business/Professional

Bank

3. Provide information regarding Educational Background and Professional Credentials

4. Signature

Name of Organization: _____

By: _____

Title: _____

Signature: _____ Date: _____

Exhibit B: Landscape Architect/Designer Qualifications Statement

Landscape Architect/Designer Qualifications Statement

Type of Professional: Landscape Architect Designer

Name: _____ Phone: _____
Address: _____ Fax: _____
_____ Email: _____

Type of Organization:

- Corporation
- Partnership
- Individual
- LLC
- Other

Statement of Purpose: _____ Pre-Qualification _____ Project for Client

1. Experience
Please submit a resume of work in progress or completed projects. Resume must include photos.

2. Reference
Business/Professional

Bank

3. Provide information regarding Educational Background and Professional Credentials

4. Signature: _____
Name of Organization: _____
By: _____
Title: _____
Signature: _____ Date: _____

Exhibit C: Builder Qualifications Statement

Builder Qualifications Statement

Name: _____ Phone: _____
Address: _____ Fax: _____
_____ Email: _____

Type of Organization:

- Corporation
- Partnership
- Individual
- LLC
- Other

.....

Statement of Purpose: _____ Pre-Qualification _____ Project for Client

1. Experience

Please submit a resume of work in progress or completed projects. Resume must include photos.

2. Reference

Business/Professional

Bank

3. Provide information regarding Educational Background and Professional Credentials

4. Signature

Name of Organization: _____

By: _____

Title: _____

Signature: _____ Date: _____

EXHIBIT "G"

Building Material Standards

The term "Building Materials Standards" shall include all minimum standards for building products and materials and aesthetic methods in the construction, renovation, maintenance and/or alteration of a Residential or Mixed-Use Building as set forth or referenced in the following:

1. Frisco's Zoning Ordinance, Ordinance No. 11-04-09, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto), including but not limited to Sections 4.07.09, 4.08.02, 4.09.03 and 4.12.03 of the Zoning Ordinance
2. The PD Ordinance, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
3. Ordinance No. 19-11-101, International Energy Conservation Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
4. Ordinance No. 19-11-97, International Fuel Gas Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
5. Ordinance No. 19-11-100, International Mechanical Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
6. Ordinance No. 19-11-99, International Plumbing Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
7. Ordinance No. 19-11-98, National Electrical Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
8. Ordinance No. 19-11-102, International Residential Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
9. Ordinance No. 19-11-96, International Property Maintenance Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
10. Ordinance No. 19-11-111, National Fire Protection Association Code, Standard 13R and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
11. Ordinance No. 19-11-112, National Fire Protection Association Code, Standard 13 and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)
12. Ordinance No. 19-11-113, International Fire Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)

13. Ordinance No. 19-11-103, International Building Code - Commercial and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)

14. Ordinance No. 19-11-104, International Swimming Pool and Spa Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)

15. Ordinance No. 19-11-105, International Existing Building Code and all local amendments thereto, as it exists or may be amended by Frisco in its sole discretion (and any successor ordinance thereto)

16. Any other existing, future or successor ordinance, rule or regulation adopted by the Frisco City Council that establishes a standard for a building product, material or aesthetic method in construction, renovation, maintenance or other alteration of a Residential or Mixed-Use Building that is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the Residential or Mixed-Use Building